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This dissertation examines crime and disorder in the North Carolina Piedmont between 1760 and 1806, exploring the ways that criminal justice and the law were enforced in the region. It is rooted in an analysis of the colonial and state Superior Court records from Salisbury and Hillsborough and traces the process by which authorities—first the colonial government and then the revolutionary state—attempted to establish and maintain order in the region. This most basic function of criminal justice necessarily involved the identification of individuals and groups of people as criminals by the state. I argue that understanding this legal and juridical process, which marked many of the people of the region as unfit subjects and citizens, helps provide a framework for understanding the turmoil and disorder that characterized the Revolutionary era in the region. As the North Carolina government sought to assert its legitimacy through imposing order, it marked presumptively disorderly men and women including horse thieves, land squatters, “Regulators,” Loyalists, and, significantly, the enslaved, as outlaws. Faced with alienation from legal and political legitimacy, these people resisted, articulating in the process a different conception of justice, one rooted in the social, political, and cultural realities of the region. This dissertation, then, traces a pattern of conflict and turmoil that reveals very different, and at times diametrically opposed, understandings of justice between governing elites and local men and women in the Piedmont. Moreover, by focusing on the interrelated issues of criminality, justice, and order, this work attempts to deepen scholarly understanding of the Revolution in the

North Carolina backcountry, in particular the ways it affected the relationship between individuals and the state. It stresses the coercive character of the revolutionary experience in the region and argues that the Revolution was a turning point in the process of state consolidation that began with the Regulator revolt of the 1760s. Emphasizing the experiences of those criminalized by the state sheds light on a process by which conflicting conceptions of justice, inflected by factors including wartime exigencies, racial attitudes, religious values, and the *lex talonis*, established the boundaries of an emerging republican society.

CRIME, JUSTICE, AND ORDER IN
THE NORTH CAROLINA
PIEDMONT,
1760-1806

by

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TABLE OF CONTENTS

CHAPTER	Page
I. INTRODUCTION	1
II. “THE CIVIL POLICE IS HARDLY YET ESTABLISH’D”: CRIME AND JUSTICE IN THE PIEDMONT	26
III. “A HOST OF SCOUNDRELS...MADE INTREPID BY ABUSE”: CRIME, JUSTICE, AND THE REGULATORS.....	78
IV. “WICKED CONTRIVERS AND PROMOTERS OF VIOLENCE”: JUSTICE, ORDER, AND THE REVOLUTION IN NORTH CAROLINA	132
V. “OFFENCES OCCASIONED BY THE LATE WAR”: CRIME, CONFLICT, AND RECONCILIATION IN THE PIEDMONT, 1781- 1785	184
VI. “AN EVIL AND PERNICIOUS PRACTICE”: SLAVERY, JUSTICE, ORDER, AND THE POST-REVOLUTIONARY PIEDMONT	249
VII. CONCLUSION.....	316
BIBLIOGRAPHY.....	325

CHAPTER I

INTRODUCTION

Thomas More observed in *Utopia* that his society's approach to criminals could be described in no other way than "making them into thieves and then punishing them for it." More wrote amid a perceived epidemic of crime and urban poverty stemming from the enclosure of common lands in the English countryside. He meant, essentially, that a society that denied a basic living to its poorest members practically condemned these unfortunate people to a life of crime, setting in motion a cycle that led them inexorably to the London gallows, where, according to More, "as many as twenty at a time" died on execution days.¹ But More's strikingly modern critique of sixteenth-century English society holds truths for criminal justice more generally. The proposition that criminality is a sociopolitical construction, one shaped by political power along with society's priorities, anxieties, and prejudice, has been fundamental to many important histories of crime. Indeed, if there is a leitmotif of criminal justice historiography, at least in Western societies, it is that criminal justice systems have historically been structured to reinforce and perpetuate oppressive class, racial, and gender systems.² In early America, no less

¹ Thomas More, *Utopia*, trans. Clarence H. Miller (New Haven, CT: Yale University Press, 2001), 25. This passage is also paraphrased and briefly analyzed in Michael Weisser, *Crime and Punishment in Early Modern Europe* (Atlantic Highlands, N.J.: Humanities Press, 1979), 1.

² Important works that have focused on class include Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century*, 2nd ed. (London: Verso, 2006); Edward P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (New York: Pantheon Books, 1975); Douglas Hay, "Property, Authority, and the Criminal Law," in Hay, Linebaugh, John G. Rule, Thompson, Calvin Winslow, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (New York:

than More's Tudor England, the administration of criminal justice targeted individuals whose criminality was the direct result of government policies and of their own social isolation. Religious dissenters in New England, "wanton and lascivious" women in Philadelphia, and restive enslaved men and women from New York to Georgia, among many others, were targeted by authorities for the threat they supposedly posed—albeit for very different reasons—to public order.³ As one legal scholar has observed, criminal justice and other law was a "mirror of what elites, magistrates, and leaders thought about the good, the true, and the right, about justice and order."⁴ Promoting justice and order were, and remain, central to the legitimacy of government, but exactly who was perceived as a threat to justice and order was highly politicized and historically contingent, and the attitudes of elites and leaders, while crucial, were not the only ones

Pantheon Books, 1975): 17-63; Linebaugh and Marcus Rediker, *The Many-headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000); and Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984). For the relationship between slavery, race, and criminal justice, see Michael S. Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980); Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge: Harvard University Press, 2001) and especially Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010). Some recent works focusing on gender include Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006); Clare A. Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006); Carol Karlson, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: W.W. Norton and Company, 1987); Jen Manion, *Liberty's Prisoners: Carceral Culture in Early America* (Philadelphia: University of Pennsylvania Press, 2015); Kristen Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, NY: Cornell University Press, 2002). As many of the titles suggest, the intersectionality of race, class, and gender is crucial to the interpretations found in many of these works.

³ Gary B. Nash, *The Urban Crucible: The Northern Seaports and the Origins of the American Revolution* (Cambridge: Harvard University Press, 1979), 117.

⁴ Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 23.

that mattered. Consequently, what constituted the good, the true, and the right—concepts intrinsically linked with notions of justice—was as fiercely contested in early America as it is in modern society.

This dissertation is in part a study of these themes. It examines crime and disorder in the North Carolina Piedmont from 1760 to 1806, exploring the ways that criminal justice and the law were enforced in a region that was, throughout the period encompassed by this study, widely considered a lawless backwater. Fundamentally, it addresses a few interrelated questions that are foundational to any study of criminal justice: Who committed crimes? Who was prosecuted for crimes, and why? Which of these men and women were convicted, and why and how were they punished? These questions, ostensibly simple ones, nevertheless raise a tangled skein of other, more complex issues that lead to the central argument of this study, for the years 1760-1806 were the most turbulent in the region's history, rife with disorder and bloodshed. As one historian of violence in the American Revolution has recently written, by the time of the Revolutionary War, the Southern backcountry, including the North Carolina Piedmont, "had been in the grip of violence for almost two decades."⁵ Beginning in the late 1760s, the region experienced the Regulator movement, an agrarian uprising that began in 1768 and culminated with a pitched battle at Alamance Creek, then in Orange County in the heart of the northern Piedmont, in 1771. Even before the Regulator rising, the region, among the fastest-growing in the colonies, experienced considerable turmoil related to

⁵ Holger Hock, *Scars of Independence: America's Violent Birth* (New York: Broadway Books, 2017), 302.

land tenure. These sporadic, sometimes violent upheavals, along with the perceived frequency of horse stealing and other crimes typical on the early American frontier, gave the region a reputation as a lawless backwater among many powerful men in the colony and beyond. The Regulation was in part an extension and expansion of these endemic disputes over land, and the measures taken by royal governor William Tryon—with the nearly-unanimous support of the colony’s political class—to crush the uprising were the first of many sustained efforts to establish order in the region. The Revolution, which was met with skepticism among many ordinary people in the Piedmont, can be better understood in light of this development. For people who experienced it, I argue that the Revolution in the North Carolina backcountry was experienced as a continuation of attempts by the state to expand its power by punishing its malcontents. Many of the crimes that were prosecuted during this time, were, I argue, the direct result of these attempts, which played a major role in the outbreak of the brutal civil war that engulfed the region after 1781.

Beyond the questions that are basic to criminal justice studies, then, this dissertation considers the social, economic, and especially political circumstances that contributed to crime and disorder in the region. After the war, the courts in the region were caught up in attempts by educated eastern politicians, jurists, and attorneys to impose a rationalized legal regime on the region. This development, common throughout the United States after independence, sat ill at ease with the localist sensibilities of the region, yet it also coincided with two important developments in the aftermath of the Revolution in the Piedmont. The first was the establishment of a “revolutionary

settlement” in which the state reconciled with the region’s many Loyalists. The second was the expansion of slavery in the Piedmont. The criminal justice system was deeply implicated in each of these developments.

This dissertation is rooted in an analysis of the Superior Court records from Hillsborough and Salisbury between 1760 and 1806. Beginning in 1759, the colony of North Carolina was divided into five judicial districts, each located in one of the colony’s towns: Wilmington, New Bern, Halifax, Edenton, and Salisbury. A district centered on Hillsborough, located in Orange County (near modern Chapel Hill) was added in 1767. In the Piedmont especially, these towns were small even by colonial standards, but each was a regional nexus of economic, political, and social activity, especially on court days, which routinely attracted large crowds. Most minor cases, including small claims and misdemeanors, were heard by justices of the peace in county courts, or “courts of pleas and quarter sessions,” so called because they met four times a year in each county. Superior courts heard more substantial cases in equity, or civil cases with more than £20 at stake, and held jurisdiction over all felony cases. Superior court judges were chosen, usually three at a time, by the governor, and spent most of the year traveling from one district to another, holding court sessions biannually in each seat. This structure, enormously taxing for the judges who traveled through the backcountry to hold court, nevertheless remained in place for some time after the Revolution. In 1806, the General Assembly established a new system that abolished the geographically untenable “riding” districts and located a superior court in each county. During and immediately after the Revolution, the far western reaches of the Salisbury District were organized into

additional districts, but the heart of the region was encompassed by these two districts for the entirety of the period covered by this work.

The content of the North Carolina's court dockets, rather than the court structure per se, is the focus of this dissertation. What I have found in the court records, as well as in other primary sources discussed below, is a criminal justice system that struggled to maintain and establish order in the region, long seen as a necessity by the elites that controlled first the colony's then the state's politics. On the one hand, the ostensible purpose of criminal justice systems is to maintain order. But in so doing, some groups made decisions about who to criminalize. For these reasons, this dissertation is less about the process by which criminal justice was administered as it is about the groups of people that were targeted as criminals by the state. People in the region were not simply alienated from political power—in this chaotic period many were actually criminalized by the state, declared unworthy for membership in society. During the Revolution, even neutrality itself became a criminal act. Still, by forbearing from a policy of out-and-out retribution after the war, the state actually used the courts as a means of reincorporating people into society. But with white fears of enslaved criminality elevated by the revolutionary experience, this was an indulgence denied to the enslaved everywhere, including the Piedmont, where enslaved people faced increased strictures out of proportion to their modest (but in places considerable) numerical growth.

In short, the upheaval of the period made it essential for the North Carolina government to assert its legitimacy through maintaining order. This was an especially urgent priority during the Revolution, when the new state struggled to assert and project

its legitimacy among a divided and traumatized population. But it was crucial throughout the period, and especially in the Piedmont, a region seen by the colony-turned-state's elites as a lawless backwater full of criminals. Land squatters, horse thieves, so-called "Regulators," Tories, and other presumptively disorderly men were outlawed by the government, which prioritized their punishment. Establishing order entailed the criminalization of "others," albeit sometimes with justification. But many of these criminals, drawing on very different notions of criminality, made their own claims on justice too. The Regulators, for example, argued that corrupt cabals, centered—not coincidentally—on the county courthouses, oppressed them through fraud and graft. Loyalists pointed to the rampant violence and lawlessness of Whig partisans as a justification for their own crimes against the Revolutionary state. Many other people in the region asserted their ideals of justice in more subtle ways. Juries declined to convict horse thieves who faced the death penalty if found guilty. Sympathetic crowds formed to spring local men from jails, and grand juries refused to return indictments against accused traitors. Often these popular reactions arose from a system of understanding described by historian Laura Edwards as "legal localism," a way of understanding the law that was shaped by a number of different factors, including evangelical religion, local economic conditions, and, above all, a first-person awareness of local events and conditions. In some ways, it was analogous to the concept of a "moral economy" perceived by historians in crowds, and before the emergence of professional, state-sanctioned police forces, the crowds that stormed the jails of the Piedmont would have been difficult to distinguish from men deputized by sheriffs to track down fugitives. But this was not a

way of thinking held only by ordinary men and women in the Piedmont. Many local elites cherished their ability to dispense justice in ways that made sense to them, and that would cultivate influence in their communities.⁶ This way of thinking was under attack by educated Whig lawyers who sought to establish a more rationalized legal system based on uniform legal principles that transcended popular understandings seen as parochial and unenlightened.⁷ This struggle, which took place against the backdrop of political divisions that persisted in the wake of the Revolution, was part of a broader dispute over the nature of liberty, citizenship, and justice in the new state and nation. Crucially to this dissertation, this dispute involved very different, at times diametrically opposed, notions of justice, a concept shaped by a number of factors, but especially local conditions and political interests. “Justice” is not synonymous with “criminal justice,” which refers specifically to the system by which accused criminals were policed, arrested, accused, tried, and punished. But the men and women of the region expected that the courts and the government they represented would make decisions that comported with their ideas of justice. Their localism, a persistent theme in studies of the backcountry in North Carolina and elsewhere, was not rooted in a desire to be distant from government, but a belief that government should reflect their notions of right and wrong.

⁶ Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-revolutionary South* (Chapel Hill: University of North Carolina Press, 2009); E.P. Thompson, “The Moral Economy of the English Crowd in the Eighteenth Century,” in *Customs in Common: Studies in Traditional Popular Culture* (New York: W.W. Norton and Company, 1993): 186-258. For an extended discussion of the role of popular religion and a moral economy in the North Carolina backcountry, see Marjoleine Kars, *Breaking Loose Together: The Regulator Rebellion in Pre-Revolutionary North Carolina* (Chapel Hill: The University of North Carolina Press, 2002).

⁷ Lars C. Golumbic, “Who Shall Dictate the Law?: Political Wrangling between ‘Whig’ Lawyers and Backcountry Farmers in Revolutionary Era North Carolina,” *NCHR* 73, no. 1 (January 1996): 56-82.

Court records are indispensable to the study of early America, including North Carolina. Yet few book-length studies of crime and society (at least outside of Puritan New England) exist. One of these monographs, however, Donna Spindel's 1989 work *Crime and Society in North Carolina, 1663-1776*, deals specifically with colonial North Carolina. Analyzing the records of all surviving criminal proceedings in the colony's first century, Spindel argues that North Carolina, contrary to interpretations that emphasized the relatively underdeveloped nature of North Carolina's institutions, actually featured a "comparatively sophisticated court system." According to this interpretation, this legal apparatus effectively enforced the law in a society that was, to a surprising extent, characterized by deference to authority, including the authority of the courts.⁸ The role of criminal law and the courts in the policing of enslaved people in colonial North Carolina was also well-documented in a chapter in Marvin L. Michael Kay and Lorin Lee Cary, *Slavery in North Carolina, 1748-1775*. Noting the arbitrary nature of the proceedings in the slave courts, and the brutality of the sentences they handed down, Kay and Cary were especially interested in the delicate balance between the interest that North Carolina, as a slave society, had in protecting property interests and in policing the enslaved population. The tensions between these two objectives were worked out in the slave courts, often with horrific consequences for slaves found guilty of crime. More recently, Kirsten Fischer, in *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina*, has drawn heavily on court records to illustrate what she calls the "continual contestation,

⁸ Donna J. Spindel, *Crime and Society in North Carolina 1663-1776* (Baton Rouge: Louisiana State University Press, 1989), ix-xi.

reassertion, and reconfiguration of racial categories within the context of sexual relations.”⁹ Each of these studies ends with the outbreak of the Revolution, and this dissertation, which concludes with 1806, thus expands chronologically on the existing literature.

Other studies—notably Jack Greene’s 1963 work *The Quest For Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776*, “*Poor Carolina*”: *Politics and Society in Colonial North Carolina, 1729-1776* by A. Roger Ekirch (1983) and *Crowds and Soldiers in Revolutionary North Carolina: the Culture of Violence in Riot and War* by Wayne E. Lee (2001) have addressed the issues of crime and justice in colonial North Carolina at least obliquely. Greene and Ekirch (a student of Greene) focused on the role of the courts in the political struggles between the lower house of the North Carolina Assembly and a series of royal governors. Lee, on the other hand, attempted to delineate the boundaries of legitimate violence in war and in the extralegal crowd actions that were an important form of political protest in early America.¹⁰

Outside of North Carolina, several influential legal histories have examined the relationship between crime and society in colonial and early America. Douglas Greenberg’s 1976 study *Crime and Law Enforcement in the Colony of New York, 1691-*

⁹ Marvin L. Michael Kay and Lorin Lee Cary, *Slavery in North Carolina 1748-1775* (Chapel Hill: University of North Carolina Press, 1995); Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, N.Y.: Cornell University Press, 2002), 5.

¹⁰ Jack P. Greene, *The Quest For Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1789-1776* (New York: Norton, 1963); A. Roger Ekirch, “*Poor Carolina*”: *Politics and Society in Colonial North Carolina, 1729-1776* (Chapel Hill: University of North Carolina Press, 1981); Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville, Fla.: University Press of Florida, 2001).

1776 sought to break what an earlier scholar termed “the traditional isolation of the law from other disciplines,” attempting what he termed a “social history of law,” or perhaps more accurately, a legal history of society, in colonial New York. *Criminal Justice in Colonial America, 1606-1660* (1983) by Bradley Chapin, details the difficulties in replicating English legal traditions in a colonial context and what he perceives as a gradual shift toward statutory law—“legal prescription”—in seventeenth-century criminal jurisprudence.¹¹ More recently, Jack D. Marietta and G.S. Rowe trace the history of crime and punishment in Pennsylvania, a place where, according to the authors, “there should have been no crime.” The prevalence of crime in Pennsylvania, the authors argue, manifested a failure of the utopian aspirations of William Penn’s “holy experiment,” a declensionist theme often seen in similar works on Puritan New England.¹² In different ways and in different contexts, these legal histories of crime pose similar questions, most dealing with changes in criminal law and the social and political contexts of crime. Almost all, moreover, are rooted in statistical analysis. *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* by Edward Ayers also analyzes data on crimes and punishments in several southern locations, but Ayers broadens his research base considerably beyond the confines of the courtroom and thus

¹¹ Douglas Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca, N.Y.: Cornell University Press, 1974), 12-13; Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660* (Athens, Ga.: University of Georgia Press, 1983).

¹² Jack D. Marietta and G.S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia: University of Pennsylvania Press, 2006), 1. Prominent works on New England that address the role played by criminal courts in society include Kai Eriksen, *Wayward Puritans: A Study in the Sociology of Deviance*; Edwin Powers, *Crime and Punishment in Early Massachusetts, 1620-1692: A Documentary History*; and Mary Beth Norton, *In the Devil’s Snare: The Salem Witchcraft Crisis of 1692*.

outside criminal law. Like this dissertation, the focus of *Vengeance and Justice* is on social and cultural themes—among its most important themes is Southern honor—seen through the lens of criminal justice rather than studying the history of criminal law in itself.¹³

Historian Woody Holton has recently noted a “renewed focus on state power,” a “significant development” in Revolutionary historiography, particularly among studies that emphasize the role of marginalized peoples in the Revolution.¹⁴ Indeed, it was (and is) in the criminal courts that the relationship between the individual and the state became clearest. When a court passed a sentence of death on a convicted felon, the state’s power over subjects and citizens was distilled to its essence, as Max Weber wrote, the “monopoly of legitimate violence.” As Jessica K. Lowe has written in a recent book on a high-profile murder in 1790s Virginia, before written constitutions “to think about constitutional questions was to think about the interchange between power and liberty, and criminal law provided the paradigmatic example of the state’s power over the citizen.”¹⁵

For these reasons, this dissertation adds to a growing literature that emphasizes the development of the state during and after the Revolution. I suggest that the process of

¹³ Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York: Oxford University Press, 1984).

¹⁴ Woody S. Holton, “American Revolution and Early Republic,” in Eric S. Foner and Lisa McGirr, eds., *American History Now* (Philadelphia: Temple University Press, 2011), 33.

¹⁵ Max Weber, “Politics as a Vocation,” in *The Vocation Lectures*, David S. Owen and Tracy B. Strong, eds. (Indianapolis: Hackett, 2004), 33; Jessica K. Lowe, *Murder in the Shenandoah: Making Law Sovereign in Revolutionary Virginia* (New York: Cambridge University Press, 2019), 9.

state consolidation over the Piedmont did not begin with the outbreak of the Revolution in 1775, but with the struggle in the backcountry that exploded into the Regulator Movement in the late 1760s. My conclusions comport with those of those of historians such as Barbara Clark Smith, who questioned in her 2010 book whether historians could be certain that the “freedoms [colonial Americans] lacked were more important than the freedom they had?” Other historians, particularly Robert Parkinson, have emphasized that the process of creating new American citizens during the war meant deliberately excluding those who were deemed inimical to the Revolutionary “common cause.” These historians have both stressed the inequalities that persisted in American society after the Revolution and emphasized the coercive nature of the Revolution itself. Still others have noted how quickly and thoroughly the new states, and the Republic in general, abandoned much of the egalitarian rhetoric of the Revolution in the process of constructing a republican society. Taken as a whole, these historians have argued against a popular understanding of the Revolution, one endorsed by some neo-Whig historians, that emphasizes its liberating potential and asserts its essentially democratic character.¹⁶

Finally, this dissertation is also an attempt to add to the growing field of Loyalist studies. It uses the dual lenses of criminal justice and disorder to look at the reasons why

¹⁶ Barbara Clark Smith, *The Freedoms They Lost: Consent and Resistance in Revolutionary America* (New York: The New Press, 2010); Robert G. Parkinson, *The Common Cause: Creating Race and Nation in the American Revolution* (Chapel Hill: The University of North Carolina Press, 2016); Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (University of North Carolina Press, 1999) and *Unruly Americans and the Origins of the Constitution* (New York: Hill and Wang, 2007); Michael A. McDonnell, *The Politics of War: Race, Class, and Conflict in Revolutionary Virginia* (Chapel Hill: University of North Carolina Press, 2007); Alan Taylor, *American Revolutions: A Continental History, 1750-1804* (New York: W.W. Norton, 2016); Terry Bouton, *Taming Democracy: “The People,” the Founders, and the Troubled Ending to the American Revolution* (New York: Oxford University Press, 2007).

some men and women in the North Carolina Piedmont chose to commit the ultimate crime against the state—treason—and concludes that many did so in response to the exigencies of war rather than an ideological disposition or actual loyalty to the Crown. Many of even the most violent Loyalists took up arms in an attempt to gain retributive justice against Whig partisans and outright criminals who despoiled and terrorized supposed Tory households in the name of the revolutionary cause. In the absence of criminal courts, this, they thought, armed treason was their only option. Like historian Rebecca Brannon, whose recent work on postwar South Carolina analyzes the ways that former Loyalists were reintegrated into society, I focus on those Loyalists who remained in the state at the end of the Revolution, many of whom faced trial or other legal retribution for their actions. In this process, which Brannon has elsewhere characterized as “transitional justice,” communities and local courts were as involved in the reintegration of Loyalists as the Superior Courts, the state legislature, and the governor.¹⁷ Here, too, the state’s leaders attempted to restrain popular impulses toward punitive measures.

Each of these issues is historically significant, speaking to the lived experience of a population of North Carolinians in an especially fractious region during the Revolutionary era. Many eighteenth-century North Carolinians are known to us only because their names appear fleetingly in criminal court records, and thus if a criminal

¹⁷ Rebecca Brannon, *From Revolution to Reunion: The Reintegration of the South Carolina Loyalists* (Columbia, S.C.: The University of South Carolina Press, 2016). For “retributive justice,” see Brannon, “America’s Revolutionary Experience With Transitional Justice,” in Brannon and Joseph S. Moore, eds., *The Consequences of Loyalism: Essays in Honor of Robert M. Calhoon* (Columbia, S.C.: University of South Carolina Press, 2019), 190-207.

history is in many ways a history of the marginalized, it can also be a history of the ways in which North Carolinians became marginal, or more accurately extramarginal, in the eyes of the law and the state. A history of these people can thus begin to address the questions of consensus, participation, and consequences that have long engaged scholars of the Revolutionary era. The state's power over its citizens was rigorously contested in the courts, which became battlegrounds—sometimes literally—over the nature of justice.

Historian John David Smith writes that “not only have historians been imprecise and unclear in defining the geographical contours of the Piedmont, but they also have too commonly paid short shrift to its early history.”¹⁸ This study will not remedy the first concern, but part of its aim is to shed light on the process of its development from 1760-1806 through the lens of criminal justice and the state. To this end, I have surveyed criminal court case adjudicated in the Superior Courts at Hillsborough and Salisbury between 1760 and 1806. I have also looked at cases heard before special courts of oyer and terminer (including slave cases), county court records, and some cases that made it to state courts of appeal after the Revolution. This involves a number of complexities, not least of which is that the court records for the period tend to be spotty at best. It is difficult, and in many cases impossible, to track a case from its beginnings—usually when a complaint was filed with a magistrate or justice of the peace, who would then issue a warrant—to sentencing. Even when the sentence was recorded, it is often unclear that they were actually carried out. Appeals for benefit of clergy and executive clemency

¹⁸ John David Smith, “‘I Was Raised as Poor and Hard as Any Slave,’”: African-American Slavery in Piedmont North Carolina,” *NCHR* 90, vol. 1 (January 2013): 3.

sometimes, but not always, survive, and in some cases, the only record that exists of their death at the gallows is a reimbursement voucher from the executioner requesting pay from the state for his services.¹⁹ North Carolina's colonial and state court records are housed at the North Carolina Archives in Raleigh. Arranged by district, they include court documents that include bills of indictment, depositions, warrants, and ephemera. These documents, found in the criminal action papers for each district, help to flesh out the criminal court dockets that record, in terse and formulaic language, the cases that came before the courts, but they are incomplete. In addition to manuscript court records, I have drawn heavily from published sources, particularly the Colonial and State Records of North Carolina, published in twenty-six volumes in the late nineteenth and early twentieth centuries.²⁰ Only a handful of court records are published in this collection, but it includes laws passed by the colonial and state assemblies and other sources useful for establishing context for what transpired in the courts. At times, particularly during the

¹⁹ "Benefit of clergy" was a legal term for a special form of clemency that could be extended to the offender under common law. Its name was derived from the fact that clergy were exempted from executions for many crimes in medieval England. Over time, the privilege was extended to first literate men, and then women. By the eighteenth century, many men or women convicted of capital crimes could receive benefit of clergy—instead of hanging, they received a brand on the inside of their thumb to indicate their offense. The convicted man or woman had to plead for benefit of clergy at time of sentencing. Traditionally, they were made to read Psalm 51 from the Bible: "Have mercy upon me O God...according unto the multitude of thy tender mercies, blot out my transgressions," a requirement that was both proof of literacy and rite of expiation. However, no records from the Piedmont indicate that anyone read the passage, nor that benefit of clergy was only available to literate people. Some offenses in North Carolina were, at various times, exempted from benefit of clergy, including treason, murder, and horse stealing. Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660* (Athens, GA: University of Georgia Press, 1983), 48-50.

²⁰ The first ten volumes of the series, which span the period from 1662 to 1776, were edited by William L. Saunders, North Carolina Secretary of State from 1879 until his death in 1891. North Carolina Supreme Court justice Walter Clark took up the project in 1893, publishing sixteen volumes that terminated in 1791. H.G. Jones, "William L. Saunders," in *DNCB*, ed. William S. Powell (Chapel Hill: University of North Carolina Press, 1994) 5:286-7.

Revolution, when the courts were closed, these records provide the only glimpse at the administration of justice in the Piedmont.

Early Americanists are accustomed to finding significant lacunae in the records, but this problem is made more acute in the history of crime, simply because the reported records almost certainly represent only a sliver of actual crime in the region. Many historians, therefore, have commented on what legal historian Douglas Greenberg called the “‘dark figure’ of unreported crime.” Crimes might go unreported because of the social consequences of bringing them to the courts, intimidation by the perpetrators, or because of the limited reach of law enforcement, among many other reasons. Many transgressions were punished by churches, communities, or within families. The scale of this issue is immense even in modern societies. In 2012, the United States Bureau of Justice Statistics reported that over 50%, or more than three million, violent crimes committed in the United States between 2006 and 2010 went unreported to law enforcement. In early North Carolina courts, where the social, geographical, and legal barriers to prosecuting crime were far greater than today, we can only speculate how many crimes remain invisible to us. Thus any conclusions drawn by historians from court records, Greenberg reminds us, must be understood as “cultural artifacts rather than objective reflections of social behavior.”²¹ Many of these criminal acts, though not accounted for in the criminal

²¹ Douglas Greenberg, “Crime, Law Enforcement, and Social Control in Colonial America,” *The American Journal of Legal History*, 26, 4 (Oct, 1982): 294; Bureau of Justice Statistics, “Victimizations not Reported to the Police, 2006-2010,” by Lynn Langton, Marcus Berzofsky, Christopher Krebs, and Hope Smiley-McDonald, NCJ 238536, Washington, DC, US Department of Justice, 2012, <https://www.bjs.gov/content/pub/pdf/vnrp0610.pdf> (Accessed June 8, 2019). As will be discussed later in this dissertation, rape and other sexual crimes against women were especially unlikely to be heard in criminal courts due to prevailing attitudes toward sexual relations with women and the resulting social

justice system, did not go unpunished, but were dealt with through extrajudicial means. These included duels (admittedly very uncommon in their conventional form in the eighteenth-century North Carolina backcountry), brawling, church sanction, and especially mob actions, which were almost by their very definition aimed at promoting justice.²² Other important aspects of the administration of criminal justice in early American are largely inaccessible to historians. With only very few exceptions, what Cornelia Hughes Drayton has called the “dramaturgy” of the courtroom—the “gestures of the various participants, the gasps and sighs and catcalls of the audience,” and other aspects that were sometimes as much part of criminal proceedings as evidence and law, are invisible in the records.²³ So too are the many cases for which documents have been lost.

The period from 1760 to 1806 was one of political and social ferment unsurpassed in American history, and, as I argue throughout this dissertation, the North Carolina backcountry experienced at least as much turmoil as any other region. Perhaps unsurprisingly, then, I emphasize crimes that are explicitly political in nature—riot, treason, and others—in the chapters on the Regulation and the Revolution which form the heart of this study. These “political” crimes were deemed most dangerous to public order,

consequences of reporting these crimes. Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill, NC: 2006).

²² Ayers, *Vengeance and Justice*, 5. For the importance, and the ubiquitousness, of fighting in the backcountry, see Elliott J. Gorn, “‘Gouge and Bite, Pull Hair and Scratch’: The Social Significance of Fighting in the Southern Backcountry,” *AHR* 90, no. 1 (Feb., 1985): 18-43.

²³ Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995), 5.

a threat to the legitimacy of the state. On the one hand, as historians Edward Muir and Guido Ruggiero have written, every crime represents “a moment when a culture fails in its own terms...when microsystems challenge macrosystems of power and values.”²⁴ Every crime, in its way, is thus a political act. Still, some crimes were more overtly political than others. And even if the circumstances of many individual criminal acts do not mark them as overtly political, the way that the state’s leaders prioritized their prosecution was. Fundamentally, criminalization is a function of power, and decisions about who to criminalize were obviously related to political developments, and in time of war, the term “criminalization” may be insufficient to describe the experience of people who were literally declared enemies of the state. Many historians have pointed out that power dynamics in eighteenth-century North Carolina were regional in nature, that is, eastern elites who occupied positions of power controlled the lawmaking process.²⁵ This is true, and as I argue here, was an important factor in exacerbating the Regulator uprising, for example. But local dynamics were also in play. As a number of historians have observed, the Regulators equally opposed the grasping, avaricious local officials that they deemed criminal. Likewise, many people in the Piedmont, including former Regulators, were driven to treason and even other less blatantly political crimes not so

²⁴ Edward Muir and Guido Ruggiero, *History from Crime: Selections from Quaderno Storici* (Baltimore: Johns Hopkins University Press, 1994), viii.

²⁵ After the Revolution, however, the backcountry largely held sway, which is one reason why the state initially declined to ratify the new Constitution in 1788—western delegates and their constituents universally opposed it. Jason Stroud, “Samuel Spencer: Anti-Federalist,” in *North Carolina’s Revolutionary Founders*, ed. Jeff Broadwater and Troy Kickler, Chapel Hill: University of North Carolina Press, 2019), 199-216.

much by ideology, or even—in many cases—by economic interest. Rather it was the overbearing behavior of the revolutionary state and the criminal behavior of those who claimed to act on its behalf that pushed many to cast their lot with Loyalists. This fact was well known to Whig leaders, including one who pointed out to a superior that the “imprudencies & irregular proceedings” of their men made enemies among civilian populations.²⁶ At the same time, even the presence of Loyalists, people whose very existence represented defiance of state power, called into question the legitimacy of the state. Likewise, laws that criminalized the economic activities of enslaved people—cultivating tobacco for profit, for instance, deliberately drew a racialized line between African Americans and whites, making a privilege, as it were, out of a right seen as fundamental by eighteenth-century thinkers.

Eighteenth-century Americans did not experience or encounter the law and criminal justice in the same ways as modern Americans do. The institutions of justice were, paradoxically, at once more remote and far more intimate. Unlike modern Americans accustomed to encountering uniformed police on a daily basis, people in the Piedmont would only rarely see representatives of the courts—judges, coroners, sheriffs, and constables that administered justice in the region. At the same time, when they did encounter them, it was often under intimate and informal circumstances—they received them in their homes, they stood trial in the parlors of justices, and they swore depositions

²⁶ Steven Drayton to Thomas Burke, *SRNC* 15: 511.

under shade trees.²⁷ At times, in the absence of a professionalized police force, ordinary people were themselves enlisted to enforce the law, whether by a hue and cry, or even by attending or witnessing the execution or physical punishment of a convicted criminal. But among the many effects of the Revolution on the people of the North Carolina Piedmont, I argue in the following chapters that one of the most important was that the powers of the North Carolina government were brought to bear on their lives in far more meaningful ways than ever before.

In Chapter Two, I provide a brief history of the settlement of the Piedmont before the Regulation, discussing the ways that the region's diversity and other factors contributed to the contemporary perception that it was inhabited by criminal miscreants whose licentiousness was the cause of disorder. Especially significant were the land disputes, like a disturbance in the southern reaches of the Salisbury District, that resulted in attempts by powerful and well-connected men to summon the power of the colonial government to crack down on unruly land squatters. In Chapter Three, I trace the events of the Regulator Movement, an uprising that began in the late 1760s and spread throughout the Piedmont before it was crushed by colonial militia led by the governor of the colony, William Tryon. The focus in this chapter is on the contested visions of justice and order that motivated the Regulators and their adversaries in the conflict.

In Chapter Four, I turn to the early stages of the American Revolution in North Carolina. In few places in North America did the Revolution meet with so little support

²⁷ On the informality of proceedings before magistrates in particular, and the general "proximity" of the people to legal proceedings in general, see Edwards, *The People and Their Peace*, 66-78.

as in the North Carolina Piedmont, and this meant, in practice, that first revolutionary Committees of Safety and then—after independence—the state’s criminal justice system took responsibility for what I describe as “enforcing the Revolution.” In the process, the revolutionaries criminalized even those who were lukewarm about the Revolution. Through loyalty oaths, they forced people to act out their support, and therefore their citizenship, in public. The alternative was to be labeled a traitor, which, both Whigs and their Loyalists and British adversaries agreed, was “the highest...crime...any man can possibly commit.”²⁸ Chapter Five explores the so-called “Tory War,” the bitter civil war that engulfed the North Carolina Piedmont in the wake of the British invasion of the early 1781. During this conflict, civil government gave way almost completely to anarchy, and retributive justice was the primary form of criminal justice in operation. In this environment, outrages and unlawful behavior on the part of both sides, in the absence of recognized authority, caused the conflict in the backcountry to spiral into a bloodletting that shocked observers on both sides. The aftermath of the war, though, witnessed a major debate that implicated the state’s criminal justice system. In this period, the new state had to sort out which people, judging by their criminal behavior during the Revolution, were worthy of readmission into society.

In Chapter Six, I turn to examine the ways in which slavery was implicated in criminal justice in the Piedmont, an area where it was decidedly marginal prior to the Revolution. Slavery continued to exist in modest numbers compared to the coastal plains,

²⁸ Blackstone, *Commentaries* IV: 75.

but it was significant in the region. Slave courts, slave patrols, and other accoutrements of slavery appeared in the Piedmont for the first time. While the numerical expansion of slavery was not insignificant, I argue that what is perhaps most telling about the policing of slavery—and the concomitant criminalization of African-Americans—was that it was out of proportion to the actual numbers of enslaved people in the region. I argue that this represented in part a legacy of the Revolution, in which many African-Americans had visibly participated in what amounted to a social revolution of their own. Several other factors were significant as well, including the proportionally large (and growing) black populations of Piedmont towns. Also significant was the fact that slavery's expansion was intertwined with attempts by political leaders, mostly eastern elites with an eye on promoting order, sought to rationalize the state's legal system. In any case, African-Americans in the region and the state as a whole were increasingly viewed as potential agents of disorder, and local and state governments devoted their efforts to regulating and policing them, often through violence. It was in the slave courts, held at the county level, that criminal justice was perhaps most entwined with local interests, and the inequalities of criminal justice were most stark.

As with many of the Piedmont's residents, the voices of enslaved people accused of crime are heard only in echoes through accounts that are often contradictory and always produced in a context defined by inequality. Beyond these concerns, historians face the more basic problem that eighteenth-century manuscript documents are notoriously difficult to read. Many of the hundreds of documents consulted for this work were in degraded condition, showing evidence of water, fire, and insect damage in

addition to the ravages of time. The nature of the sources causes problems as well. Many of these documents, particularly depositions, were hastily scribbled down by busy clerks and other officials. Still, I have maintained the punctuation and spelling from the original documents. When highly unconventional spelling makes meaning unclear, I have included a bracketed explanation. Most, but not all, of the published primary sources I have consulted have followed the same practice.

Numerous scholars of eighteenth and nineteenth century Britain have outlined the ways in which the criminal law, including its enforcement, served to advance the interests of the privileged, propertied classes, a perspective best expressed by mid-eighteenth century writer Timothy Nourse, who described ordinary Englishmen as “rough and savage...being of levelling Principles, and refractory to Government.” The best way to deal with such “insolent and tumultuous” people, Nourse wrote, was to “bridle them”:

[A]nd to make them feel the spur too, when they begin to play their Tricks, and kick. Such Men are to be look'd upon as trashy Weeds or Nettles, growing usually upon Dunghills, which if touch'd gently will sting, but being squeez'd hard will never hurt us.²⁹

Many of North Carolina's elites no doubt shared Nourse's opinion of many of the people of the Piedmont. Indeed, as the following chapters show, some said so. Yet it should never be assumed that the state, through the workings of criminal justice, implemented a regime on helpless people. As many colonial historians have shown, the court was a

²⁹ Timothy Nourse, *Campania Foelix, Or a Discourse of the Benefits and Improvement of Husbandry*, (London: Thomas Bennett, 1700), 15-16. This passage is quoted in Douglas Hay, “Property, Authority, and the Criminal Law,” in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Hay, et al (New York: Pantheon Books, 1975), 25.

space where elites performed, justified, and exerted their power, where “the weight of the law and its magistrates” was brought to bear on “simple countryfolk.”³⁰ This study, however, turns on the premise that not just the courts, but also the criminal justice system in general, were also spaces where the law and the understandings of justice that undergirded it, were contested.

³⁰ Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982), 93.

CHAPTER II

“THE CIVIL POLICE IS HARDLY YET ESTABLISH’D”: CRIME AND JUSTICE IN THE PIEDMONT

On May 7, 1765 a surveying party was attacked near Sugar Creek in Mecklenburg County, North Carolina as they attempted to survey a parcel of lands belonging to George Augustus Selwyn, an absentee English land speculator with extensive holdings in the region. At the head of this small band of surveyors were several prominent members of the local community, including John Frohock and Abraham Alexander, justices of the peace in Rowan and Mecklenburg Counties respectively. These local officials worked on behalf of Henry Eustace McCulloh, whose father Henry, a powerful English merchant and land speculator, had sold the lands in question to Selwyn’s father.¹

Two days later, the younger McCulloh described the incident in a letter to his friend Edmund Fanning, an Orange County official with close ties to royal governor William Tryon. According to McCulloh’s account of the incident, a group of “Rioters to the number of twelve or more, blacked and disguised and armed with Guns and Clubs” set upon the surveyors as they commenced their work.² Abraham Alexander received the

¹ Selwyn, like many other English aristocrats with large landholdings in British North America, never visited his lands in North Carolina. He appointed Henry Eustace McCulloh, Abraham Alexander, Thomas Polk, and John Frohock as commissioners to act in his interests. They were instructed to set up a courthouse and a county seat (Charlotte, established in 1766) in the newly-established Mecklenburg County. “Selwyn, George Augustus,” in Gayle E. Calder, “George Augustus Selwyn”, *Dictionary of North Carolina Biography*, ed. William S. Powell (Chapel Hill: University of North Carolina Press, 1996) vol. 5: 314-15.

² Council Journals, May 7-9, 1765, William L. Saunders, ed., *The Colonial Records of North Carolina* vol. 7 (Raleigh: Josephus Daniels, 1888): 38.

“bastinado” (i.e., his bare feet were caned) and was “striped from the nape of his neck to the Waistband of his Breeches.” Another member of the party “very nearly had daylight let into his skull,” and Frohock received a “damnable wipe across the Nose and Mouth.” McCulloh was convinced that, had he been with the group and not “Providentially detained by particular business,” he would have “most assuredly & without any ceremony...been murdered.” Indeed, he wrote, the attackers had already declared “solemnly—publicly, they will put me to Death.”³ McCulloh apparently legitimately feared for his life, and his account was an appeal for the support of the colonial government—in this case royal governor William Tryon. He sought to criminalize the actions of the attackers in order to marshal the powers of the colonial government to bring them to heel. He did not mention that, in ordering the surveys, he had himself violated a cease and desist order from Tryon in response to a petition from Mecklenburg County farmers. But his anger was as real as his fears, and he wondered, given the disorderly state of the backcountry, if he would ever gain satisfaction for this affront to his proxies at Sugar Creek. “Shall not my soul see its Revenge?”:

[C]an the Annalls of the history of this Country, parallell this affair,—*omnibus consideratis considerandis?*—Shall not my soul see its Revenge?—By the Eternal God,—it shall not be for want of my utmost Exertions.—Didst thou ever hear of such a thing as Grand Larceny,—or the *Black act*? But these things, at present *Sub Rosa*...⁴

³ McCulloh to Edmund Fanning, May 8, 1765 *CRNC* 7:32-34.

⁴ Ibid.

McCulloh's evocation of the "Black act" is telling. Passed by Parliament in 1721, the law created an array of capital offenses, including a sentence of death without benefit of clergy to anyone who, "armed...having his or their faces blacked or in disguised habits" hunted, fished, destroyed property, or otherwise assembled in forests, royal parks or other enclosures. Historian E.P. Thompson characterized this act as among the most vicious in the history of English law. Ostensibly passed in response to an outbreak of poaching incidents in Hampshire and Windsor Forest estates amid the economic crisis that followed the South Sea Bubble, it served a broader purpose. In a very short passage of time, Thompson writes, it became "divorced from the 'emergency' which supposedly occasioned it, and...entered the general armoury of repressive law." It was the part of a series of legislation passed by Parliament in the early eighteenth century that cast the protection of private property as the most important end of criminal law, one worth preserving with state-sponsored violence, or, Thompson put it, "the doctrine of undifferentiated and crude retribution."⁵ Men like McCulloh held extensive property interests in the North Carolina Piedmont, but, despite also possessing considerable political influence, they could only, in the 1760s, fantasize "Sub Rosa" among themselves about summoning the powers encompassed by the Black Act in defense of their interests. Indeed, the party led by Frohock and the Alexanders was not the first to experience riots and threats of violence. A few weeks earlier, McCulloh himself had retreated from the Selwyn tracts in the face of a group of armed settlers who warned him

⁵ Edward P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975), 206-11, 270-71.

to leave before he was “tied neck and heels and be carried over the Yadkin [River].”

North Carolina Governor Arthur Dobbs—the owner of multiple tracts of land in the area, experienced a similar riot in 1762.⁶

The attackers, contemptuously (though perhaps understandably) dismissed as “a pack of Unmannerly Sons of Bitches” by the wounded and humiliated Abraham Alexander, saw the incident in a different light, but with no less appreciation of the issues at stake. The exact substance of their grievances is lost along with their petition to the colonial legislature, but they stemmed from McCulloh’s attempts to survey lands they had already settled and improved. Their actions, which had parallels in similar incidents around the colony, were rooted in a different understanding of justice from the colony’s leaders. For the rioters, it was McCulloh and his cronies who had behaved as criminals. The surveyors, they argued, exploited their access to power to unjustly deprive the so-called squatters of their rights to land they had settled and improved. Even the apparently random brutality of their attack was, as historian Wayne E. Lee has argued, carefully conducted in such a way as to claim a certain amount of legality. Employed by the courts as a means of corporal punishment, whipping had a quasi-juridical connotation. By “striping” the surveyors, most of whom were themselves justices of the peace, the crowd took the law into their own hands and punished them as criminals in a way that would have been recognizable to backcountry farmers.⁷ In short, their actions were not simply

⁶ Council Journals, May 7-9, 1765, *CRNC* 7:22; Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville, Fla.: University of Florida Press, 2001), 30-31.

⁷ Lee, *Crowds and Soldiers*, 32-33. At the same time, as Lee observes, whipping was also a form of punishment frequently meted out to enslaved people and indentured servants. To be whipped, especially

those of an unruly mob—they methodically dispensed justice, however rough, to men whose actions threatened shared community standards—a “moral economy”—related to land ownership. A number of historians have described the core beliefs of this ideology, which was informed and publicly justified by a somewhat contorted reading of John Locke.⁸ In his *Second Treatise on Civil Government*, published in 1689, Locke argued that men created property out of common lands by applying their labor to it, thus “improving” it:

Thus the grass my horse has bit, the turfs my servant has cut, and the ore I have digged in my place I have a right in them in common with others become my property...The labour that was mine, removing them out of that common state they were in, hath fixed my property in them.⁹

Whether or not the Sugar Creek settlers knew their Locke, they chafed at McCulloh’s demands that they pay £8 to £12 sterling per 100 acres to secure titles to their lands, a valuation essentially based on the extent to which they had improved the lands in question.¹⁰

for men with genteel pretensions like the Frohocks and the Alexanders, was to be humiliated. The fact that the men who delivered this punishment were beneath them in standing in the community would have made this insult particularly difficult to bear.

⁸ See, for example, Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820* (Chapel Hill: University of North Carolina Press, 1990), 101-3; and Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Penguin Books, 2006), 112-13.

⁹ David Wootton, ed., *John Locke: Political Writings* (Indianapolis: Hackett Publishing Company, 1993), 275.

¹⁰ Marjoleine Kars, *Breaking Loose Together: The Regulator Rebellion in Pre-Revolutionary North Carolina* (Chapel Hill: University of North Carolina Press, 2002), 40.

Along with a grounding in a popular strain of English political thought, these “Unmannerly Sons of Bitches” had a further claim to legitimacy, one rooted in the power structures of the Carolina backcountry. They represented a group of farmers and settlers that included Thomas Polk, a justice of the peace who had himself confronted McCulloh during an earlier effort at surveying lands in the region. Polk’s brother John lodged an official complaint about McCulloh’s actions to governor William Tryon on behalf of “himself, and many other Inhabitants, settled on the lands of George Selvin Esqr” in April of 1765. Without fully deliberating with the Council on the complaint, Tryon ordered that McCulloh “desist from any steps in Law to dispossess these People” until the matter was mediated.¹¹ Though McCulloh flagrantly violated the order by sending the surveying party to the Widow Alexander’s lands, Tryon changed his stance when he and the Council learned from Fanning—through McCulloh’s letter—of the incident at Sugar Creek. Nearly fifty men in the region, including Thomas Polk, were charged with riot on evidence given by McCulloh, Frohock, and the Alexanders in the fall of 1765, but their cases were dismissed at the March 1766 session of the Salisbury District Court. Clerk of Court John Frohock himself recorded the result.¹²

Eventually, McCulloh managed to secure fees averaging £13 proclamation money (substantially less than the average £10 sterling he had originally demanded) for the lands

¹¹ Lee, *Crowds and Soldiers*, 32-34; Council Minutes, May 7-9, 1765, *CRNC* 7:6.

¹² Salisbury District Superior Court, Trial and Minute Docket, 1766, North Carolina Department of Archives. Kars plausibly suggests that the indictments were dropped because many of the accused, in particular the affluent Thomas Polk, agreed to pay for the lands in question. Kars, *Breaking Loose Together*, 47-48.

from settlers. Some of these transactions were financed by mortgages he offered himself, with one-third of the price payable at purchase. McCulloh rather hyperbolically called the affair the “war of Sugar Creek,” and the name has endured, with historians generally interpreting it as a sort of prologue to the Regulation that followed. Historian Marjoleine Kars has rightly observed that the incident illustrates how “access to political and legal power allowed men like McCulloh to win confrontations with settlers.”¹³ Ultimately, McCulloh was better connected than the rioters, including Polk, who eventually gave his support for McCulloh’s offer in any case. But if the “Sugar Creek War” is a case study in the imbalances of power in the colonial backcountry, it also offers historians a revealing glimpse into eighteenth-century understandings of criminal justice, ideas that were often contested in struggles over land and power in the Piedmont. In particular, it demonstrates the conviction among elites, both within and outside the region, that it was essentially a lawless backwater.

This tension between state-sanctioned criminal justice and popular justice lies at the heart of the political and social turmoil in the North Carolina Piedmont. At Sugar Creek, rapid population growth interacted with the multiplicity of economic interests in the region to precipitate a conflict in which each side attempted to impose a form of justice that criminalized the behavior—indeed the motives—of the other. The differences between these ideals was significant, and the stakes were high, in the region. In surveying the legal landscape of British America, historians have correctly emphasized the

¹³ Kars, *Breaking Loose Together*, 42-47.

importance of English legal authority, usually manifested in the form of early modern “common law” authorities like Edward Coke, Henry Bracton, Matthew Hale, and, in the 1770s, William Blackstone. To the extent that colonists deviated from the principles of English law, they did so when it was out of step with colonial institutions—particularly slavery. As the legislature of one southern colony put it, the “peculiar...situation and condition” of slavery meant that the laws policing it “could not fall within the provision of the laws of England.”¹⁴ Like elsewhere in British America, in the backcountry of the Carolina Piedmont, the administration of justice cohering to English legal structures and forms was a major priority for local officials. But this form of justice existed in an uneasy relationship alongside another, more localized understanding of justice, one which was shaped by the experiences, economic interests, and mores of ordinary people, and this relationship was constantly contested, sometimes openly, in a struggle over power that often involved the criminal courts.

In this chapter, I survey the regional development of the colonial North Carolina Piedmont before the Regulator movement. I examine the structure and ideological assumptions of criminal justice in colonial North Carolina as a whole, and attempt to trace the difficulties that accompanied administering and achieving justice in the Piedmont. I am especially interested in crimes, like the Sugar Creek riots, that seemed to traduce the administration of justice itself, because they establish a crucial context for the

¹⁴ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1992), 30-31; Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740-1790* (Ithaca, N.Y.: Cornell University Press, 1998), 63.

bitter conflicts that roiled the region from the late 1760s to the end of the Revolutionary War. While it is perhaps easy to sympathize with the Sugar Creek settlers, they were, in the eyes of colonial elites, an extralegal—even illegal—mob that acted, like many others in the region, in contempt of peace and order, refusing to show the deference owed to their betters.¹⁵ These crimes, as well as others, contributed to a shared view of the Piedmont as a lawless backwater, a view that helped shape government dealings with the region throughout the Revolutionary era. In other words, seen in this light, the Regulators were just one mob among many that plagued the region. Their suppression was essential to the establishment of order in the region.

I also attempt to construct a general portrait of the administration of justice in the region, one which takes into account the legal framework of colonial North Carolina as well as the structures and offices through which justice was administered. These offices, particularly the Salisbury District Court, were meant to be a source of order and stability prized by elites and indeed most ordinary settlers. Court activity did, in fact, provide security and perpetuated class inequalities in the region, at least for some. But the courts just as often served as a forum in which interpretations and definitions of criminal justice were contested and negotiated, sometimes with violent consequences. If the courts were, as historian Donna Spindell has observed, a “crucial core of stability, both representing and imposing order,” the process by which they did so needs examination. So, too, do the meanings that North Carolinians, at least in the context of the Piedmont, assigned to the

¹⁵ The difference between “extralegal” and “illegal” mobs was a significant one, especially in a study of crime and criminality. It will be explored in the next chapter.

concepts of “stability” and “order,” and for that matter, “disorder.”¹⁶ These themes, introduced here, will be fully developed in subsequent chapters.

The Colonial Piedmont and Its Inhabitants

Geographically, the Piedmont lies between the Appalachian Mountains to the west and the flat, sprawling coastal plains to the east. North Carolina’s Piedmont is part of what geographers have termed the “Carolina Crescent,” a geographic feature that extends into modern-day Georgia and Alabama. Characterized by rolling hills and red clay soils, the region was fertile, but not generally well-suited to the kind of intensive cash-crop agriculture that characterized the Virginia Tidewater and the South Carolina Low Country in the eighteenth century. This was particularly true as one approached the Appalachians in the West. The Piedmont thus remained largely free from sustained white incursions in the first half of the eighteenth century.¹⁷ As a colony, other factors limited economic growth, and thus the settlement of its interior. North Carolina possessed a treacherous coastline ringed by barrier islands that featured few good ports. Plantation owners and farmers had few outlets for their produce, a factor that tended, over time, to slow the economic expansion of the colony.

Despite these factors—or in many ways because of them—the region was still attractive to some settlers. The Native population of the Piedmont, once made up of a diverse array of powerful peoples, had been decimated by disease, war, and emigration

¹⁶ Donna Spindell, *Crime and Society in North Carolina 1663-1776* (Baton Rouge, Louisiana State University Press, 1989), ix-xi.

¹⁷ Karen M. McDearman, “Piedmont,” in *The New Encyclopedia of Southern Culture: Volume 2: Geography*, ed. Richard Pillsbury (Chapel Hill: University of North Carolina Press, 2006): 192-193.

by the early eighteenth century. Their remnants inhabited only a handful of small villages along the Catawba River in the south and the Eno River, near the site of Hillsborough, in the northeast corner of the region. A series of South Carolina-led expeditions against the Cherokee further reduced Native presence and influence in the region by 1760.¹⁸ Even before these developments, though, the region's undulating lands and hardwood forests were an enticing prospect for many colonial farmers. Beginning in the 1730s, the region received a massive influx of settlers, mostly from Pennsylvania, Maryland, and Virginia, who entered the region in a large-scale migration that continued apace until the outbreak of the Revolutionary War. These migrants were pulled by the allure of cheap land and pushed by land shortages and by the turmoil of frequent warfare on the Pennsylvania frontier. They arrived in the region via paths that crisscrossed the region centuries before white settlement. Most of these new arrivals were Scots-Irish, though many Germans settled in the region as well. Many of these people or their ancestors had migrated to Pennsylvania, Maryland, and New Jersey during the early eighteenth century, but, finding land too scarce even in that "best poor man's country," moved to the North Carolina Piedmont. As Moravian Bishop August Gottlieb Spangenburg remarked upon his first visit to the colony in 1752, many people from the "northern colonies" had settled in the region "on account of poverty as they wished to own land & were too poor to buy in Pennsylvania or New Jersey." Spangenburg contrasted these "good farmers and very

¹⁸ Tom Hatley, *The Dividing Paths: Cherokees and South Carolinians Through the Era of Revolution* (New York: Oxford University Press, 1993), 141-175.

worthy” settlers with the “natives of the State,” English colonists in the Albemarle region who he deemed “naturally indolent and sluggish.”¹⁹

The Moravians were unique in many ways, yet they embodied the combination of economic and religious motives that brought settlers to the Piedmont. Members of the Renewed Unity of Brethren, a Protestant sect known as Moravians from their origins in that region of the Hapsburg Empire, they settled in the region at the invitation of John Carteret, Earl of Granville. Beginning in 1753, the Brethren provided much-needed settlers in the so-called “Granville District,” Granville’s proprietary lands encompassing the entire northern half of the colony. Part of a scattering of Moravian settlements around the Atlantic World, the towns and farms comprising “Wachovia” sat astride important trade routes in the region, including the “Great Wagon Trail” from Pennsylvania. As one historian has observed, Granville’s lands provided the Brethren with “a large, unbroken tract on which to separate church members from outsiders and the promise of a future population large enough to provide a market for Moravian products, services, and land sales.”²⁰ The Moravians were part of a patchwork of European peoples who settled in the Piedmont, and despite their relative insularity, at least in their early years, they were at the nexus of economic activity in North Carolina. Their remarkably thorough records provide historians with a window into life in the region.

¹⁹ Ramsey, *Carolina Cradle: The Settlement of the North Carolina Frontier, 1747-1762* (Chapel Hill: University of North Carolina Press, 1964), 17; Diary of August Gottlieb Spangenburg, *CRNC* 4:1311-14.

²⁰ Daniel Thorpe, *The Moravian Community in Colonial North Carolina: Pluralism on the Southern Frontier* (Knoxville: University of Tennessee Press, 1989), 26.

Upon arrival, these settlers must have found the North Carolina Piedmont, particularly the region that lay between the Yadkin and Catawba Rivers, reminiscent of the places they had left. The upper North Carolina Piedmont was part of a “broad, fertile, unsettled grassy belt” that extended from the western reaches of the Upper Chesapeake. This largely vacant expanse invited settlement by farmers in search of affordable land.²¹ The wave of settlement had rolled into the lower Piedmont by the 1760s, with Scotch-Irish and German settlers, many fleeing the war-ravaged Pennsylvania frontier, moving into the lower Catawba River valley and southeast toward the Sandhills in modern Anson County. Modern historians recognize the rapid population growth of the region as one of the most significant demographic trends in colonial North America, and it did not escape the attention of contemporaries. Matthew Rowan, acting governor of North Carolina marveled at the region’s expansion in a letter to the Board of Trade in 1753:

In the year 1746 I was up in the Country that is now Anson, Orange and Rowan Countys, there was not then above one hundred fighting men there is now at least three thousand for the most part Irish Protestants and Germans and dayley increasing.²²

Less than fifteen years later, recently-appointed governor William Tryon estimated that “upwards of one thousand wagons passed thro’ Salisbury with families from the northward.” Most of these families, Tryon claimed, decided to settle in his colony, and even those who continued into Georgia or Florida frequently returned to North Carolina.

²¹ Ramsey, *Carolina Cradle*, 6-7.

²² Matthew Rowan to the Board of Trade of Great Britain, June 28, 1753, CRNC 5:24.

By modern estimates, the population of North Carolina doubled between 1730 and 1750, and then tripled by 1770. By 1767, a Virginia newspaper could marvel that “scarce any history, either ancient or modern...affords an account of such a rapid and sudden increase of inhabitants in a back frontier country, as that of North Carolina.”²³

While individual motives varied, these settlers generally came to the region in search of (or attempting to maintain) what was described in the eighteenth-century world as a “competency.” Historian Daniel Vickers has described this concept as “comfortable independence,” or more precisely “the possession of sufficient property to absorb the labors of a given family while providing it with something more than a mere subsistence.”²⁴ Settlers in the colonial backcountry were not isolated from the market, and they certainly were not interested in escaping its reach. Their involvement with the broader Atlantic economy was aimed at ensuring their independence, and they worried when their economic interactions threatened, rather than secured, this status. Their arrival marked the beginning of a process by which a largely vacant hinterland was transformed into a populous and politically restive region.

²³ Letter from William Tryon to the Board of Trade of Great Britain, August 2, 1766, CRNC 7:248; Harry Roy Merrens, *Colonial North Carolina in the Eighteenth Century: A Study in Historical Geography* (Chapel Hill: University of North Carolina Press, 1964), 52-55; *New York Journal; or the General Advocate*, November 5, 1767, copying the *Virginia Gazette*; quoted in Watson, “Counterfeiting in North Carolina: A Reassessment,” *North Carolina Historical Review* 79 (April 2002): 191.

²⁴ Daniel Vickers, “Competency and Competition: Economic Culture in Early America,” *WMQ* 47, no. 1 (January 1990): 4.

The Legal Landscape of the Colonial North Carolina Piedmont

Throughout the period 1755-1806, the Piedmont was a legal and political construct as well as a geographic region. Beginning in 1755 the entire region--at that time divided into Rowan and Anson counties--was encompassed by one judicial district, one of five in the colony. The Superior Court met twice yearly in the fledgling city of Salisbury, with minor cases being heard by justices of the peace in the county courts, or courts of "Pleas and Quarter Sessions," four times yearly. Petty cases were heard in magistrates courts, where justices also took depositions, issued warrants, and handled other business between sessions. In the quickly-growing Piedmont, magistrates courts—and on occasion even quarter sessions courts, were sometimes held in the homes of the justices of the peace or, more often, in taverns. While a functioning courthouse was a requirement for each county, and the Assembly often allocated funds for this purpose, some counties continued held court at private residences until a permanent structure could be constructed.²⁵ So at least as far the courts were concerned, the isolated nature of the backcountry could highlight the inequalities prevalent in North Carolina, as accused men faced trial in the homes of prominent local men. As in other colonies, court sessions—both county and superior—were important events, especially in those communities who had permanent courthouses. Tavern owner William Steele, who operated an establishment near the Salisbury court house, did a full 79 percent of his business in the years 1765 to 1770 during periods when either the county or district

²⁵ See, for example, Stokes County Court Minutes, 1790-1803, NCA. The Stokes County Court met in the "house of Gray Bynum" for several sessions from 1790 to 1791. A courthouse was finally constructed in Germanton in 1792.

courts met.²⁶ In 1767, the Hillsborough District was created for Orange and Granville counties, with its center at the small merchant town of Hillsborough. By 1777 it also included the newly-created Wake, Chatham, and Caswell counties.²⁷

Criminal Justice in Colonial North Carolina

In North Carolina, and especially in the backcountry, the court was the physical and symbolic embodiment of state power. County courts in particular represented the only interactions that ordinary people had with colonial officials, but the bi-yearly meetings of the Superior Courts were the scenes of life-and-death dramas that would have been the talk of these small communities. Unfortunately, no accounts survive to document popular reactions to high-profile trials, but the Regulators in particular were acutely attuned to the proceedings of the district courts. In many ways, then, to study the criminal courts is to study one of the most important facets of the relationship between people and the state in eighteenth-century North Carolina.

As elsewhere in the English Atlantic World before the Revolution, criminal justice was conducted along the lines prescribed by British common law, a corpus of precedents and traditions based on legal decisions that stretched back before the Norman Conquest.²⁸ At the top of the legal pyramid in North Carolina were the superior courts,

²⁶ Daniel Thorp, "Taverns and Tavern Culture on the Southern Colonial Frontier: Rowan County, North Carolina, 1753-1776, *The Journal of Southern History* 62, no. 4, (Nov. 1996): 677.

²⁷ David Leroy Corbitt, *The Formation of North Carolina Counties, 1663-1943*, (Raleigh: North Carolina Division of Archives and History, 1987), 212, 61, 59.

²⁸ Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 27.

which had jurisdiction over felony criminal cases as well as cases in equity over ten pounds proclamation money.²⁹ Beginning in 1754, the Assembly divided North Carolina into five judicial districts, part of a legislative reform of the judiciary that responded to the growth of the colony. Twice a year, the chief justice of the colony along with three associated justices convened courts in a district seat. By 1758, these court towns were Edenton, Halifax, New Bern, Salisbury, and Wilmington. Hillsborough was added as the seat of a sixth judicial district in 1768. The Superior Court justices travelled from court to court, a practice known as riding. While common in the Anglo-American world, this was particularly arduous and dangerous in North Carolina given the generally poor condition of the colony's roads. Superior Court justices who held session in the courts in the Piedmont described the arduous nature of the journey to court. James Iredell wrote his wife that the journey from Hillsborough to Salisbury was "disagreeable" and the "accommodations wretched." Along the way, Iredell's companion Samuel Johnston condescendingly asked "the woman of a very dirty Dutch house if there were any brooms in that part of the country."³⁰

With a few exceptions, Superior Court sessions were held in both Salisbury and Hillsborough, in March and September of each year, and generally lasted less than a week. From 1773 to the outbreak of the Revolution, however, the Superior Courts did not

²⁹ "An Act, for Establishing the Supreme Courts of Justice, Oyer and Terminer, and General Gaol Delivery of North Carolina," Walter Clarck, ed., *State Records of North Carolina* (Goldsboro: Nash Brothers, 1906), vol. 25:274.

³⁰ James Iredell to Hannah Iredell, *The Papers of James Iredell*, Vol. 2, 1778-83, ed. Don Higginbotham (Raleigh: North Carolina Historical Commission, 1976): 8.

function at all due to a long-running dispute over a judicial reform bill opposed by the Crown. Governor Josiah Martin, left with little option, cajoled the House into passing a temporary measure to establish courts of oyer and terminer, which had traditionally been convened only for special cases deemed important enough to hear between district court sessions.³¹ But this development mainly affected civil cases—accused criminals would not have noticed much of a difference between the workings of the courts in any case.

Minor cases were heard by county or magistrates courts, presided over by justices of the peace. These cases included petit larcenies, assaults, batteries, and minor trespasses, but they might also be called upon to preside over a court of oyer and terminer, particularly when the accused was an enslaved person. Justices of the peace took depositions, issued warrants, administered oaths to constables, and in many cases, they could require the accused or witnesses to enter into recognizance, or a sum of money to be forfeited if they failed to show up for their case. In short, the county courts were responsible for “supervising and controlling many of the activities and interests of the inhabitants” and were thus the main venue for interaction between Piedmont residents

³¹ The issue was the insistence of the House of Commons that the bill to re-establish the Superior Court must contain a provision that the property of foreign debtors, including Britons, could be attached for debts even if they had never lived in the colony. This 1770 law, as well as another in 1773, was rejected by the Board of Trade as contrary to English common law. Martin’s decision to create these courts, while obviously necessary, was condemned as an abuse of executive authority by the lower house, which refused to fund them until March of 1774. A similar dispute had broken out in the years 1759-1761, when the Crown disallowed successive court bills because they traduced the prerogative of the royal governor. Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776* (Chapel Hill, NC: University of North Carolina Press, 1963), 420-424. Courts of “oyer and terminer” convened under special circumstances—slave trials, for example, technically fit this description though they were not always referred to as such. In addition to the instances described here, courts of oyer and terminer met to try captives in the Regulator uprising discussed in Chapter Two as well as the early stages of the Revolution, described in Chapter Three.

and the colonial government before the Revolution. Piedmont residents went to the county courts to record deeds, prove wills, acquire licenses for taverns, and register brands on various livestock.³² Magistrates usually performed their roles in decidedly informal settings. Charles Woodmason observed that in the backcountry, many magistrates did “their sitting” in taverns alongside patrons engaged in “Shooting, Dancing, Revelling” and “Drinking Matches.” As historian Laura Edwards writes, these officials “heard complaints when and where they received them.” If they determined a complaint warranted further action, they presided over hearings and trials in a variety of locations, including private homes, in the shade of trees, or, as Woodmason fretted, amid the tumult and bacchanalia of backcountry taverns.³³

English legal tradition emphasized legal procedures and forms, but the concept of a “criminal justice system,” with a professional, uniformed police force, prisons, and an ostensibly rehabilitative ethos was unknown in colonial America. North Carolina never established a state penitentiary until after the Civil War, and then only after much debate over its cost. In the British colonies, the task of law enforcement fell to sheriffs and especially constables. The governor appointed a sheriff from each county by the governor from a shortlist supplied by the county courts. One historian of North Carolina’s colonial government has pointed out that no colonial official exercised such “plenary executive and administrative powers as the sheriff did.” Influential men already, sheriffs were

³² James Davis, *The Office and Authority of a Justice of the Peace*, 227-229.

³³ Woodmason, quoted in Thorp, “Taverns and Tavern Culture,” 663; Edwards, *The People and Their Peace*, 69.

vested with broad law enforcement powers as well as executive authorities that included tax collection, confiscating property attached in debt cases, and maintaining public buildings at the county level, including the jail. Along with constables, they served writs issued by courts, including writs of ejectment stemming from land disputes like the Sugar Creek conflict.³⁴ Sheriffs were, in short, the Crown's representative at the county level, and the position, at least in theory, held out the possibility of profit, even in cash-starved North Carolina. As tax collectors, sheriffs received a percentage of all monies collected, and, at least in the Granville District, they were entitled to a portion of the quitrents, yearly land taxes paid to the proprietor's agent. One traveler in the Piedmont observed that a person might become "possessed of Negros and a trading man" after spending a short time as sheriff in Rowan County.³⁵

The office of sheriff was open only to men of substance and standing in the colony. For many years, a county's sheriff could, by law, only be drawn from those freeholders who were either justices of the peace or assemblymen (in many cases, including in the Piedmont, prominent men held both these offices). Still, North Carolina's officials had trouble filling these essential county offices. After 1745, the assembly relaxed the requirements for the position of sheriff considerably, as the fact that many appointees were "chusing to pay their Fines rather than act in the said Office," made it "very difficult...to get any Person to recommend that will accept" the appointment. It seems that the demands of the office were so great, and the actual pecuniary rewards so

³⁴ Julian Boyd, "The Sheriff in Colonial North Carolina," *NCHR* 5, no. 2 (April 1928): 151-156.

³⁵ Theodorus Swain Drage, quoted in Ekirch, "*Poor Carolina*," 171.

small, as to dissuade men of substance from serving. Even after this legal reform, most sheriffs were chosen from the ranks of justices of the peace, and despite the evident misgivings many prominent locals may have felt in accepting the commission, the sheriff wielded considerable power.³⁶ In addition to the responsibilities described above, sheriffs were responsible for voting for assemblymen—they certified that voters owned sufficient property, supervised the *viva voce* voting process, and tabulated votes. In this way, as one recent historian has written, control of backcountry politics centered on the courts, which “were sanctioned by the next level of authority, the eastern-run House and council.” Together with justices of the peace and other local officials, they formed a “courthouse ring” tightly linked with the Assembly.³⁷ Thus in a deeply symbolic way, the courthouses where criminal justice was administered did not just represent authority and power, but corruption, injustice, and inequality, a perception that will be elaborated upon in the following chapter.

The county official most directly involved in law enforcement was the constable. Appointed by county judges, these men were responsible for preventing “breaches of the peace,” such as often occurred at taverns and other public spaces. They also served warrants and writs, helped track down fugitives, and provided security on court days in both the county and Superior courts. These men, drawn from the ranks of “middling”

³⁶ Donna Spindel, *Crime and Society in North Carolina*, 35; Act of 1745, SRNC 23:217; James Davis, *Office and Authority of a Justice of the Peace*, 338-339; Alan D. Watson, “The Appointment of Sheriffs in Colonial North Carolina: A Reexamination,” *NCHR* 53, no. 4 (October 1976): 392-393.

³⁷ Carole Troxler, *Farming Dissenters: The Regulator Movement in Piedmont North Carolina*, 13; Jason Stroud, “Partial Views and Private Interests: Corruption and Rhetoric in Colonial North Carolina, 1754-1763” (master’s thesis, N.C. State University, 2010), 76.

property owners, sometimes faced violent resistance in carrying out their duties.³⁸

Ordered to serve a warrant on one William McBride, a Rowan County magistrate accused of “taking extortionate fees,” constable Thomas Scott was beaten and “Violently” assaulted by McBride and several confederates for his troubles, and while the records do not reveal the outcome, the unfortunate Scott could have faced a fine for failing to serve the warrant. Henry Horah, the Salisbury jail keeper, was assaulted by Hopkins Muse, a Rowan County yeoman, for unknown reasons stemming from his duties in 1763.³⁹ On the other hand, even more prominent men like Anthony Hutchins, “one of his Majesty’s Justices assigned to keep the Peace” in Anson County, could face violence in the execution of their duties. Hutchins was apparently assaulted by George Downs for reasons unclear from the records. According to indictments, Hutchins ordered Matthew Raiford, William Coleman, and William Downs to “aid and assist him.” Each man “Contemptuously Dismissed” his entreaties, and he was “Grievously Beaten and Ill Treated” by George Downs.⁴⁰ Incidents like these, while isolated in time and space, contributed to two interrelated perceptions. Many officials saw a lack of respect for institutional authority as the source of a perceived atmosphere of disorder in the region. Hutchins was among several court officials named in a 1769 petition from the

³⁸ Alan D. Watson, “The Constable in Colonial North Carolina,” *NCHR* 68, vol. 1 (January 1991): 9-11.

³⁹ SDSC Criminal Action Papers, Court of Oyer and Terminer, June 1775, NCA; *King v. Hopkins Muse*, SDSC Trial and Minute Docket, 1763, NCA.

⁴⁰ SDSC Criminal Action Papers, 1762, NCA. While the records do not make clear that Hutchins was acting in an official capacity in his confrontation with Downs, the indictment handed down by the grand jury stipulates not only his honorific, “Esquire,” but that he was “one of His Majesty’s Justices.”

“inhabitants of Anson County” protesting the avarice and corruption of these men.

Among the many signers of the petition were Matthew Raiford and William Coleman.⁴¹

While the exact circumstances surrounding this incident are unclear, it seems that, at the very least, positions of local authority, while perhaps desirable for the financial and social benefits they carried, routinely exposed men to violence, a fact that reinforced the perception of the region as lawless and disorderly.⁴²

When accused criminals faced the judge and jury, they usually did so alone. Accused men and women could retain counsel if they could afford it, but most could not, and it was difficult to find lawyers competent to argue a case. Waightstill Avery, one such attorney, recorded that after he secured an acquittal for a client accused of petty larceny in the court at Salisbury, he was “immediately...surrounded with a Flood of Clients and employed this term in no less than 30 Actions.”⁴³ Those men who did practice law possessed, in the words of William Few, a Revolutionary leader who spent his youth in Hillsborough as it emerged as a court town in the 1760s, “knowledge and ascendancy” over others in their communities. Few himself claimed that his neighbors, knowing that he had borrowed and studied a law book, “sometimes applied to me for my opinion on their matters of controversy.”⁴⁴ If courts sat at the heart of society in these

⁴¹ “Petition from inhabitants of Anson County, October 9, 1769, *CRNC* 7:807.

⁴² Spindell, *Crime and Society*, 61.

⁴³ Journal of Waightstill Avery, April 12, 1769, Draper Manuscripts, North Carolina Papers, 1768-1775, Box One, NCA.

⁴⁴ “Autobiography of William Few of Georgia,” *The Magazine of American History With Notes and Queries*, Vol. 7, 1881, 343-45.

small Piedmont towns, much of the law that was administered there was esoteric and mysterious to ordinary people, and its practitioners were inherently suspect. Before the 1760s, most who practiced law in the Piedmont were bereft of any formal training. In the two decades before the Revolution, however, several educated men came to Salisbury and Hillsborough seeking work as attorneys. Avery, who received an education from the College of New Jersey, was one, and Edmund Fanning, McCulloh's correspondent and Regulator target, was another—he held a law degree from Yale.⁴⁵ Multiple writers commented on the behavior of attorneys, including one 1759 petition that claimed Robert Jones, the colony's attorney general and Fanning's mentor, often used "great volubility of speech" that "works on the passions of weak juries to blind their conception of Justice." Jones, they argued, had only attained his position through "wiles insinuation and chicanerie."⁴⁶ These men were envied for the speed with which they advanced in Piedmont society, distrusted for their genteel manner and elitist affectations, and, it seems, generally viewed by most ordinary Piedmont farmers as parasites rather than advocates in negotiating the legal system.⁴⁷

The physical appearance and spatial arrangement of the courtrooms themselves would have done little to foster a sense of trust in the system. As in other colonial courts, the judges would have worn periwigs and robes, accoutrements that, while incongruous

⁴⁵ Whittenburg, "Planters, Merchants, and Lawyers", 229.

⁴⁶ "The Petition of Reuben Searcy and Others," in Julian Boyd, ed, *Some Eighteenth Century Tracts Concerning North Carolina*, (Raleigh: Edwards and Broughton Co., 1928), 181.

⁴⁷ Whittenburg, "Planters, Merchants, and Lawyers", 229-238.

in the Carolina backcountry, connoted power and privilege. The justices, according to one observer, sat at a “bench 3 feet above the floor,” with the clerk of court, among the most powerful people in each district, situated at a desk in front of them. Judges, attorneys, and other officials read from a number of legal compendia, including, according to one man who appeared before the bar in a civil case, “Nelson’s Justices, Carys Abridgement...and Jacob’s Law Dicsony [Dictionary] All of the Latest Edition.”⁴⁸ Superior Court sessions usually lasted around a week, with grand juries summoned first to hear evidence pertaining to particular cases, usually from testimony sworn before justices, but sometimes from the accused themselves. Based on evidence, grand juries would either return a “true bill,” that is, an indictment, or determine it “not a true bill,” or “ignoramus.” If an indictment was handed down, the court issued a writ of recognizance binding the accused party to appear at the next session. Civil suits almost invariably took up most of the court’s time, and once they were completed, accused criminals faced arraignment. Indictments were read in detail, their formulaic language and invocation of the authority of the justices and the “Sovereign Lord George the third by the Grace of God of Great Britain, France and Ireland, King Defender of the Faith &c” perhaps adding to an air of mystery and intimidation for the often illiterate defendants. Once the clerk read the indictment, the accused entered a plea, and if the plea was “not guilty,” the trial proceeded.⁴⁹

⁴⁸ Joshua Lee McKaughan, “People of Desperate Fortune: Power and Populations in the North Carolina Backcountry,” *Journal of Backcountry Studies* 2, no. 1 (Spring 2007), 22.

⁴⁹ The criminal court procedure in North Carolina was very similar to that of other colonies, and indeed was not that different in form from modern criminal procedure. The description here is drawn from

As one legal historian of North Carolina has written, by “modern standards, a colonial criminal trial began and ended in the blink of an eye.”⁵⁰ The courts seldom took more than a day to hear and decide even the most serious cases. On March 23, 1767, for example, associate justice Edmund Fanning (to whom McCulloh’s letter at the beginning of this chapter was addressed) presided over four felony cases from pleadings to sentencing, including one for horse stealing, a capital offense. The convicted horse thief, Edward Howard, was confined to the Salisbury jail until he apparently went to the gallows just a couple of days later.⁵¹ Juries were drawn from landholders, though there were few other qualifications. In the September 1767 session in Salisbury, John Fondrin, acquitted for “Escape” on one day, served on a jury that convicted Henry Farrill of horse stealing the next.⁵² Little is known, unfortunately, about the trial procedure in North Carolina, which is not generally well-described in court documents. Isolated comments by court officials in surviving correspondence are all that remains. There were no professional stenographers or other court officials to record exactly what was said by court officials, the accused, and witnesses in these proceedings. As legal scholar Cornelia Drayton has observed of colonial New England courts, we are thus deprived not only of a quasi-objective account of trials, but of the atmosphere of the courtroom. The “gestures

Spindell, *Crime and Society*, pp 37-42. The invocation of the King’s name and titles was contained within the language of all indictments issued by Superior Courts before independence.

⁵⁰ Spindel, *Crime and Society in North Carolina*, 41.

⁵¹ SDSC Minute Docket, 1760-70, 140-145, NCA. This caseload was hardly atypical, and courts often heard at least that many civil cases in a single day. Spindel, *Crime and Society*, 42.

⁵² SDSC Minute Docket, 1760-70, 157-158.

of the various participants, the gasps and sighs and catcalls of the audiences, and in general the dramaturgy of...courtrooms” are unfortunately invisible to modern historians.⁵³

The scattered evidence that does exist is generated by attorneys themselves, and, like a modern courtroom drama, tends to emphasize their skills in oral argumentation. In Waightstill Avery’s account described above, the young attorney recounts his performance in the case that earned him so many clients. Avery defended Paul Crosby in a petty larceny case that began with Samuel Spencer, the prosecutor, speaking for “an Hour and 11 minutes.” Avery took nearly as long to answer him in a speech that “spoke to all the Law & Evidence.” Finally, a “Major Dunn” then spoke for over three hours, after which the jury briefly deliberated before returning the not guilty verdict.⁵⁴ Beyond these long-winded speeches, as Rhys Isaac observed in his work on colonial Virginia, “incessant oath taking” was the “most striking feature” of eighteenth-century courtrooms. Clerks administered oaths to jury foremen, witnesses, jurors (four at a time), and the accused. Constables, charged with supervising juries in their deliberations, swore not to allow jurors “Meat Drink Fire or Candle,” nor to “suffer any Person to speak to them” until they had reached a verdict.⁵⁵ The verdict they reached was often based as much on

⁵³ Cornelia Hughes Drayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789*, (Chapel Hill: University of North Carolina Press, 1995), 5. Of course, modern court records, while more detailed, contain their own biases, silences, and even errors, but eighteenth century court officials had no interest in faithfully recording the proceedings verbatim.

⁵⁴ Draper Manuscript, April 12, 1769, NCA; Spindell, *Crime and Society*, 39.

⁵⁵ Rhys Isaac, *The Transformation of Virginia*, 91; Davis, *Office and Authority*, 383.

their appraisal of the behavior and the demeanor of the accused in court as much as an impartial examination of the evidence. In this face-to-face society, the reputation of the accused was in itself deemed evidence. James Ward's indictment for passing a counterfeit bill in a tavern stipulates that Ward was a "person of Evil Name...and of Dishonest Conversation." A bill returned against John Lansly, a Rowan County yeoman, for "Witch craft and conjuration" describes him as a "man of ill name and fame and dishonest reputation."⁵⁶ Thus individuals were indicted, convicted, or acquitted based on a "shared store of common knowledge," information that was understood in almost forensic terms in this legal culture where "everyone knew everyone else's business."⁵⁷

Conviction for minor crimes such as assaults and "trespass" resulted only in a fine of twenty or forty shillings in addition to paying court costs.⁵⁸ The sentences for other, more serious crimes are discussed in more detail below, but whether a criminal received "29 lashes on his Bare back at the public Whipping Post...and to Stand in the Pillory for the span of One Hour" for "passing Bad Money" or to be "hanged by the Neck Until He

⁵⁶ *King v. James Ward*, 1763, SDSC Criminal Action Papers; *King v. John Lansly*, 1767, *ibid.* Lansly was acquitted of the charge, which was the only charge of witchcraft in the court records consulted in this study. According to the indictment, he had engaged Peter Wiant in a complicated confidence game, telling the man that he could, through a "pretended Skill in crafty Sciences," divine where lost goods were located. He accepted £20 proclamation money for this service, which essentially consisted of locating a bell that had belonged to Wiant. His crime seems to have been more akin to fraud—preying on the gullible Wiant—rather than engaging in the dark arts of witchcraft. As Chapter Six will show, "conjuring" among enslaved people was assumed by whites to be inherently malevolent, and often involved the concoction of poisons.

⁵⁷ Edwards, *People and Their Peace*, 71.

⁵⁸ "Trespass" had a broad definition under English law, but generally involved the use of force. In North Carolina, the exact nature of a "trespass" was seldom recorded, though it was often associated with assault. Trespass cases were also sometimes heard as civil actions.

is Dead Dead Dead” for horsestealing, punishments were usually swift and public. According to one legal compilation from the Revolutionary era in North Carolina, the punishment for felony was “four-fold”: the convicted person lost their life, forfeited their lands, and had their “Goods and Chattels” seized by the Crown. Moreover, the condemned suffered “corruption of Blood; so as he hath neither Ancestors, Heirs, nor Posterity.” These punishments were reserved for serious felonies like murder and high treason—goods alone were forfeited for minor felonies. Moreover, there is little evidence that so-called “corruption of blood,” or “attainted felony,” was frequently imposed on convicted men. As we will see in a later chapter, law enforcement made a point of arranging for the families of men sentenced to die for high treason (i.e. Loyalists), and the common law practice of “corruption of blood” for treason was specifically banned in Article III of the United States Constitution.⁵⁹ Overall, unlike in early modern Britain, where the trend was to execute more and more criminals for an ever-expanding list of offenses, in the colonies, only a handful of crimes were punishable by death.

Unfortunately, none of the gallows speeches and execution sermons that have fascinated historians of Puritan New England exist for the North Carolina Piedmont. We are thus deprived of what historian Karen Halttunen has called the “search for meaning in the face of violent transgression” that surely must have been as powerful in the backcountry as in Boston or New York.⁶⁰ Convicted horse thieves, murderers, and the

⁵⁹ Davis, *Office and Authority*, 174-175.

⁶⁰ Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge: Harvard University Press, 1998).

like usually “saith nothing” when asked why they should not be hanged for their crimes, and they went quickly and, as far as the sources reveal, without ceremony, to the gallows. Non-capital offenders went with equal dispatch to the pillory or the public whipping post, located in a public space near the courts. While few records exist to document these proceedings, given the prominence of public punishments as spectacles elsewhere in the English world, they were likely public, dramatic events that were well-attended by people in the community. These individuals would have often been well-acquainted with the convicted person as well as the other actors in these public dramas, the sheriffs, constables, or other designated individuals charged with carrying out the sentence. In this way, the criminal law and its consequences were immediate and personal in communities like the Piedmont.

Practical usage ameliorated some of the naked brutality of English criminal law, but convicted men often faced a gruesome and humiliating fate in North Carolina’s criminal courts. Convicted counterfeiters, for example, faced punishments that ranged from death to having an ear cut off after spending an hour in the town pillory (on top of 39 lashes “well laid on”) in full view of the public.⁶¹ These punishments were intended to, in the words of eighteenth-century English jurist and authority on the common law William Blackstone, “fix a lasting stigma on the offender” that would remain with him (and these punishments were nearly always applied to men) for life. In a “face-to-face” society where people of “ill repute” were to be avoided, the pain and the suffering of the

⁶¹ See, for example, *State v. John Cleveland*, *State v. John Taggart*, SDSC Minute Docket 1787-1801, 17-41.

men who received these punishments—and the physical scars that they bore for the rest of their lives—served as reminders of the terrible, if often diffuse, power of the state.⁶² The “spectacle of the scaffold” as described by Michel Foucault certainly did the work of the state, but perhaps nothing “showed the operation of power” quite so forcefully as the sight of disfigured men going about their lives in taverns, churches, and on farms among whispering neighbors and gawking children.⁶³ The power of the state was most brutally and visibly manifested on black bodies. In 1764, for example, a former sheriff of Rowan County claimed a fee for “hanging and setting up the head of a certain Negro named Dick” for an unrecorded offense.⁶⁴ Dick’s severed head served as an awful reminder of the violence with which the legal boundaries of slavery were policed, even in Rowan County, where in the late 1760s, African-Americans, enslaved and free, made up less than six percent of the population.⁶⁵ Indeed, William Tryon, having lived for a couple of years in the eastern counties, was equally struck by the absence of enslaved people in the Piedmont, a condition he attributed to the general poverty of the region’s inhabitants.⁶⁶

⁶² William Blackstone, *Commentaries*, 376.

⁶³ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995), 55-56. In other words, disfigurement, which Foucault (and many eighteenth-century reformers) categorized as an “atrocity,” served as a means to reproduce the power of the sovereign in places like the Carolina backcountry, where little evidence of sovereign power existed.

⁶⁴ Oath of William Napery, Rowan County Court of Pleas and Quarter Sessions, 1753-1772, NCA.

⁶⁵ Marvin L. Michael Kay and Lorin Lee Cary, “A Demographic Analysis of Colonial North Carolina with Special Emphasis upon the Slave and Black Populations, in *Black Americans in North Carolina and the South*, ed. Jeffrey J. Crow and Flora J. Hatley (Chapel Hill: University of North Carolina Press), 76-77.

⁶⁶ Tryon to Sewallis Shirley, 26 July 1765, *Correspondence of William Tryon and Other Selected Papers*, Vol. 1, William S. Powell, (Raleigh: Division of Archives and History, Department of Cultural Resources, 1980) 139.

But the criminal law was brought to bear on enslaved people there with as much ferocity as anywhere else, a fact even more in evidence as the enslaved population grew after the Revolution.

Court days themselves were, as elsewhere in the colonial south, public and often raucous occasions. Avery recorded that he “heard much caballing; saw much Bruising, Goughing, Biting, and balloching” on court day in backcountry Tryon County, and on another occasion that the court at Salisbury was too “filled with jam and bustle” to accomplish any business. Avery’s colleagues describe similar scenes.⁶⁷ If the county court house, in the words of historian Alan Watson, stood “at the apex of public structures in the colonies,” they did not always project the image of hierarchy and order that their builders intended, at least not on court days.⁶⁸ On the other hand, most of the Piedmont towns—by the Revolution, Salisbury, Charlotte, and Hillsborough—grew up around courthouses, which were the *sine qua non* of backcountry town and county development. The disorderly crowds that attended court days were testimony to the centrality of the courts to civic and political life in the Piedmont. The courts were, in short, the most prominent manifestation of state power in the backcountry.

Jails, usually one or two-room edifices near the courthouse, did not exist in every county. In Salisbury and other Piedmont communities, they were often ramshackle structures that proved chronically incapable of holding their inmates. It was the

⁶⁷ Clement Eaton, “Mirror of the Southern Colonial Lawyer: The Fee Books of Patrick Henry, Thomas Jefferson, and Waightstill Avery”, *WMQ* 8, vol 4 (1951): 526-27, 521.

⁶⁸ Alan D. Watson, “County Buildings and Other Public Structures in North Carolina, *NCHR*, 82, vol. 4 (October 2004): 430.

responsibility of constables to guard the prisoners in the jail, and failure to do so could, like Morris Thomas and Archibald Watson in 1766, lead to charges for failing to “watch and guard the publick Gaol.”⁶⁹ In the next year, several local farmers attempted to break George Martin and Thomas Eziwen from jail. When their attempt failed, they claimed that one Peter Johnson, apparently a constable, had promised to “let them have opportunities to make their escape,” a crime he vigorously denied, along with claims from one of the conspirators that he was a “Damned Ring Stealing Son of a Bitch.”⁷⁰ The public jails, along with courthouses, were focal points for Regulator protests, which, more than once, included jailbreaks, a fact that historians have used as evidence that they claimed legal standing through so doing, symbolically and actually nullifying the judgment of the courts by freeing convicted men.⁷¹ At the same time, jailbreaks and rumors of jailbreaks, sometimes initiated by large groups of men, were not at all uncommon. When Edward Howard, a convicted horse thief, was sentenced to hang for his crime in Salisbury, the Court thought a jailbreak so likely that they ordered the sheriff to “Summon a different number of men to Guard the...Goal until the day appointed for the execution.”⁷²

⁶⁹ *King v. Thomas, King v. Watson*, SDSC Criminal Action Papers, 1766.

⁷⁰ *Ibid.*, 1767.

⁷¹ Clark Smith, *Freedoms We Lost*, 2.

⁷² *King v. Howard*, SDSC, Minute Docket, 1760-1770.

The Piedmont in the Imagination

Many of the factors discussed above contributed to a perception of the North Carolina Piedmont among eastern elites as a lawless backcountry, populated by dissolute squatters, highwaymen and other “banditti.” It was, in short, characterized by disorder, which in turn made it more difficult for powerful men to realize their ambitions in the region. Historians interested in the state’s history long emphasized the regional divides in North Carolina. In the late nineteenth and early twentieth century, the Regulation, for example, was framed as a contest between sections, one with an obvious analog a century later. According to these interpretations, the Piedmont, a region dominated by yeoman farmers, was worlds apart from the eastern counties, whose politics were controlled by large plantation owners. The growing population of the Piedmont was not reflected in its representation in the colonial assembly, which tended to its own interests in legislating for the colony. Lacking “communication or sympathy with the predominant element in the government of the province,” wrote nineteenth-century historian John Spencer Bassett, the denizens of the “back-counties” became restive.⁷³ As historian James Whittenburg has pointed out, these interpretations all take for granted the “supposed economic and social isolation” of the region, a proposition that Whittenburg and other scholars have contested. Probate inventories and tavern ledgers (and, for that matter, criminal proceedings involving the theft of various items) reveal that the Piedmont was

⁷³ John Spencer Bassett, “The Regulators of North Carolina,” *American Historical Association, Annual Report for the Year 1894* (Washington, D.C., 1895), 144-148. A similar argument is advanced in Hugh Talmadge Lefler and William S. Powell, *Colonial North Carolina: A History* (New York: Charles Scribner’s Sons, 1973), 217-239.

awash with goods from throughout the Atlantic World, and the region was criss-crossed with roads that carried people and goods to Virginia, Charles Town, and North Carolina's eastern towns. Piedmont farmers raised wheat and took animal skins, particularly deerskins, for sale on global markets, and they bought, sold, and borrowed from stores and taverns connected through complex trans-Atlantic webs of credit to merchant houses in Scotland and England.⁷⁴ But if modern historians have traced the connections between the region and the broader Atlantic World, the nature and the terms of these connections (such as those that precipitated the disturbances at Sugar Creek) actually contributed to the perception of the region as an uncivilized backwater inhabited largely by rogues and criminals.

In his journal of his travels in the region, Anglican minister Charles Woodmason observed that the "Manners of the North Carolinians in General, are Vile and Corrupt....The whole Country is a Stage of Debauchery Dissoluteness and Corruption." Woodmason attributed this degraded state of the colony, and especially its western hinterlands, to the fact that its people were the "Out Casts" of other, presumably more civilized colonies, and bemoaned the fact that the "Civil Police is hardly yet establish'd."

⁷⁴ James P. Whittenburg, "Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation," *William and Mary Quarterly*, 34, 2 (April 1977), 216-217; Daniel B. Thorp, "Taverns and Tavern Culture on the Southern Colonial Frontier: Rowan County, North Carolina, 1753-1776," *Journal of Southern History* 62, 4 (November 1996), 661-688. Thorp argues that the development of tavern culture, as well as the consumer goods available in these establishments, pointed to the "cultural proximity" of the region to the metropole; Marjoleine Kars, *Breaking Loose Together: The Regulator Rebellion in Colonial North Carolina* (Chapel Hill: University of North Carolina Press, 2002), 60-64.

“When,” this anxious minister moaned, “will this Augæan Stable be cleansed!”⁷⁵ Like many outsiders who came to the region, Woodmason hoped to impose order on the “dissolute” inhabitants of the Piedmont, the better to establish the hierarchical framework upon which the Anglican Church depended. But many of his contemporaries shared his assessment of the inhabitants of the backcountry. Benjamin Franklin, for example, denigrated Pennsylvania backcountry settlers—many of whom eventually settled in North Carolina—as the “refuse” of America. These people lived in “miserable Cabins,” and sought a home where they might achieve a “happy mediocrity” with a minimal amount of industry and effort lionized by Franklin in his autobiography and other publications.⁷⁶

Franklin’s judgments reflected one side of a dichotomy in early modern British thought—on the one hand republican-minded thinkers viewed the unequal accumulation of wealth as corrupting and ultimately lethal to society. The “plain” and “honest” man was thus valorized precisely for his rusticity, held in opposition to the corruption in morals of the foppish grandee or the grasping merchant. But the ideal type of the “honest plowman” was only worthy of respect as long as he retained a certain amount of deference to his betters, and as long as his prosperity did not interfere with that of men

⁷⁵ Charles Woodmason, *The Carolina Backcountry on the Eve of the Revolution: The Carolina Backcountry on the Eve of the Revolution: The Journal and Other Writings of Charles Woodmason, Anglican Itinerant*, Richard Hooker, ed. (Chapel Hill: University of North Carolina Press, 1953), 80-81.

⁷⁶ Nancy Isenberg, *White Trash: The 400 Year Untold History of Class in America* (New York: Viking, 2016), 77.

such as Henry Eustace McCulloh.⁷⁷ Governor Arthur Dobbs, on the one hand impressed by the “very industrious” North Carolina “back settlers,” was also disturbed, as a devout Anglican, by the patchwork of religious sects that settled in the region. Dobbs worried that the “anabaptists or dippers” in particular represented a threat to the social order in the colony.⁷⁸ So did Woodmason, who regarded the “New Lights” as “children of Satan.”⁷⁹ No religious enthusiast, McCulloh nonetheless argued that the settlers that had opposed his survey and valuation of Selwyn’s lands were a “Leaven of Riot and opposition to Law” that should be removed from the colony and replaced with “honest quiet and industrious Families from the Northward.”⁸⁰

At the same time, many of the public officials who sought their fortunes in the region—and thus advocated for the imposition of order on its inhabitants—otherwise demonstrated a remarkable degree of contempt for law and order. For some men, like the young McCulloh, sent to survey his father’s extensive landholdings in the region, the “Western regions” were a place where one might pursue the pleasures of “the flesh and the Proc[lamation money].” Indeed, McCulloh has often been portrayed as an example of

⁷⁷ It should be noted that eastern North Carolina, though it was increasingly dominated politically by a nascent elite of educated planters and lawyers with political connections to England, was still only sparsely settled. Wilmington, “the most active commercial center in North Carolina before the Revolution,” and Edenton, a major seat of political power in the Albemarle, each only boasted around 1000 inhabitants by the outbreak of the Revolutionary War. Alan D. Watson, *Society in Colonial North Carolina* (Raleigh: North Carolina Office of Archives and History, 2002), 115-116.

⁷⁸ Dobbs to Board of Trade, November 9, 1754, *CRNC* 5:149; Dobbs to Daniel Burton, March 29, 1764, *CRNC* 6:1040.

⁷⁹ Woodmason, *Carolina Backcountry*, 80.

⁸⁰ Minutes of the North Carolina Governor’s Council, *CRNC* 7:27.

the grasping, avaricious bent of those who sought to exploit the most abundant resource in the Piedmont—its land, and by extension the labor of those who improved it. The “whisper” of “Mammon,” McCulloh wrote, “must be Obeyed.”⁸¹ One historian of colonial North Carolina has posited that this “acquisitive spirit” flourished in North Carolina because the colony lacked such “moderating influences as religion and gentility,” allowing the “arriviste mentality” that prevailed among the men on the make who came to the colony to dominate its politics and society.⁸² Predictably, the men who dominated colonial politics did not meet the republican ideal of disinterestedness, and the political corruption and scandals that resulted from their grasping led to frequent factionalism and divisions that reached to the top of North Carolina politics.⁸³ Indeed, North Carolina—or, perhaps more accurately, North Carolina’s political institutions—experienced one political imbroglio after another. The extent to which these eighteenth-century “crises” affected ordinary North Carolinians is questionable. At the very least they contributed to a general political instability that was a major barrier to the colony’s growth inasmuch as, at several crucial junctures, it made “compromise on even basic matters of colonial governance” nearly impossible.⁸⁴ In the Piedmont by the 1760s, these political squabbles had immediate consequences for ordinary people, as they centered on

⁸¹ Quoted in Ekirch, “*Poor Carolina*,” 46.

⁸² *Ibid.*, 46.

⁸³ Stroud, “Partial Views and Private Interests,” 83-119.

⁸⁴ Ekirch, “*Poor Carolina*,” 23.

the terms by which land-starved settlers engaged with money-hungry speculators, land agents, and court officials.

Crime in the Piedmont, 1760-1770

North Carolina's elites argued, with some justification, that many of the inhabitants of the Piedmont respected neither the law nor the men responsible for administering it. As discussed earlier in this chapter, law enforcement officials frequently met with resistance, and convicted criminals seem to have sometimes benefited from the support of the population. Peter Johnson, a Salisbury innkeeper, refused to give evidence to John Dunn, a county justice of the peace, slapping the Bible out of the justice's hands and, according to the indictment for contempt, "did willfully obstinately and contemptuously neglect and refuse to have the Oath administered to him and to give Testimony...to the great delay of Justice."⁸⁵ There were in fact twenty-seven prosecutions for contempt in the North Carolina Piedmont in the 1760s, a number that reflects the spread of the Regulator movement, if not sustained and widespread resistance to legal authority.⁸⁶ Unfortunately, the case of Peter Johnson is unique in that a record beyond the dockets exists of the incident that led to his prosecution for contempt.

Neither the rapid population growth nor the increased integration of the region into the Atlantic economy should obscure the reality that the revolutionary Piedmont remained backcountry. The patterns of crime in the region reflect, in large part, its

⁸⁵ SDSC Criminal Action Papers. It is likely that the Peter Johnson referenced in this case is the same man accused of neglecting his duties as a jail keeper.

⁸⁶ Spindell, *Crime and Society in North Carolina*, 64n.

rusticity as well as the fluidity of its population. Horse stealing, the plague of many frontier societies, was a particularly common and vexing crime in the North Carolina backcountry. Nearly every session of the Salisbury District Superior Court witnessed at least one trial of a man for horse stealing, which remained a capital offense well into the nineteenth century. One family, the Martins, which consisted of three brothers—George, James, and William—and their father George Sr., constituted such a threat to the community (as well as a flight risk) that a hue and cry was issued for them in Anson County, requiring that all “Persons above the Age of Fourteen Years...assist in apprehending the Felons, if required.”⁸⁷ The elder Martin was suspected of aiding and abetting his sons, who were wanted on suspicion of stealing a “Gray Horse about Fourteen Hands high.” According to a deposition taken in the case, Martin, perceiving a danger that his family might be “taken and brought to Justice by some Persons in the Neighbourhood” stood armed along with his sons in his “Yard...and declared that he would put a Bullet through any Man’s Body that should come to take his Son George.” None of the four men stood trial for horse stealing, perhaps a clear answer from the community to a question allegedly posed by the elder George Martin to a neighbor: “[W]ho could blame him if he went out to inform them...of something relative to the said

⁸⁷ SDSC Criminal Action Papers, Hue and Cry against the Martins, 1767. A “hue and cry” was used to apprehend felons when probable cause existed to believe they had fled the town or parish. Rooted in medieval England, it was also enacted by Assembly statute, and functioned as a means of apprehending suspected dangerous criminals in the absence of an organized police force. A hue and cry was usually issued by a justice of the peace, who commanded constables to call upon men in their district to assist in the apprehension of felons. Constables were empowered to pass along the hue and cry to other towns if the suspects were believed to have fled there. Fugitives could thus be pursued “till the Offender is apprehended or pursued to the Sea Side.” Davis, *Office and Authority*, 205-206.

Robbery.” In the meantime, James and William Martin had apparently conspired with several others to break their brother out of the Salisbury jail after an unsuccessful attempt by one of the brothers to pay John Wall, the owner of the horse, to “hush the Matter.” George Martin (the younger) was indicted for escape but was seemingly never apprehended.⁸⁸

The diffuse nature of Piedmont settlements facilitated horse stealing. One English traveler was struck by the fact that at night a farmer would simply turn his “[horse] loose in the woods” with a “bell fastened by a collar round his neck by which they are readily found in the morning.”⁸⁹ Court records reveal that this practice was often ineffective. William McSwain testified in 1779 that “in the Evening he turned out his...horse belled into the woods,” only to find him gone the next morning. Three months later, McSwain heard that his horse was “in the possession of one Cox in Cumberland County.” This case, one of the few in this study for which actual courtroom testimony survives, ended with the conviction of Charles Shearing, a laborer from Chatham County. Shearing, whose only witness was discredited due to his apparent “great agitation of Mind” in the courtroom, was sentenced to hang.⁹⁰

⁸⁸ Examination of Nathaniel Williams, January 1767; Examination of Isaac Falconbury and Joseph Harrison, 1766; Examination of James Ezziwen, 1767, SDSC Criminal Action Papers, NCA. “Escape” referred to fleeing after arrest.

⁸⁹ J.F.S. [John Ferdinand Smyth] Stuart, *A Tour in the United States of America*, (London: G. Robinson, 1784), 173.

⁹⁰ *State v. Shearing*, HDSC Criminal Action Papers, 1771-1782, NCA.

Counterfeiting, including using counterfeit bills, was another crime that evoked claims of lawlessness and disorder by the colony's elites. Like horse stealing, counterfeiting was a consequence of material conditions in the backcountry, though colonial and imperial monetary policy exacerbated the issue. North Carolina, like many American colonies, suffered from a chronic currency shortage, one which made even routine transactions very difficult for ordinary people. The problem was especially acute in the backcountry, where, numerous sources attest, taxes and fees went unpaid, credit was frozen, and appointees to public office struggled to find men to post security bonds for their performance. The problem grew worse throughout the 1760s, as the Currency Act of 1764, passed by Parliament at the behest of merchants, and the rapid population growth in the region put paper currency in even shorter supply.⁹¹ Precisely because of this shortage, the region's district courts heard a number of cases related to passing (but not printing or minting) counterfeit money in the region's district courts. On 22 September 1766, for example, Jeremiah Barnett was sentenced to "29 Lashes on his Bare back" at the Salisbury whipping post in addition to six months in jail and one hour in the pillory for "Passing Bad Money." Barnett had attempted to pass three pounds worth of Virginia bills [48 shillings British] to John Graham, a storekeeper.⁹² Piedmont taverns and stores often received counterfeit bills for their goods and services. Historians once believed, given North Carolinians' frequent complaints about the scarcity of money, that

⁹¹ Alan D. Watson, "Counterfeiting in Colonial America: A Reassessment", *NCHR* 79, vol. 2 (April 2002): 189.

⁹² SDSC, Minute Docket, 1760-1770, NCA.

counterfeiting had reached epidemic proportions by the French and Indian War.⁹³ But recent scholarship has suggested that despite the “clamor” raised against counterfeiting in North Carolina, its incidence in the colony was less common than colonial leaders reported. The overall impression is that “it was not as widespread as believed by contemporaries, that its detection and prosecution were difficult, or that to some degree it was tolerated by the populace.”⁹⁴ The final point is perhaps the most significant. While counterfeiting was a serious threat to the sovereignty of the King’s government in North Carolina and beyond, and while elites, merchants, and tavern operators decried the practice, it was seemingly accepted as a matter of necessity by many cash-deprived North Carolinians.

No doubt to the mortification of men such as Charles Woodmason, who observed that, in the North Carolina backcountry, “Polygamy is very Common...Bastardy, no Disrepute--Concubinage, General,” the courts evinced little interest in prosecuting morals crimes before the Revolution.⁹⁵ As one legal historian has observed, in many colonies justices of the peace “played a considerable role in setting the moral tone of the community. Their enthusiasm or lack of interest in the enforcement of morals was a crucial point in the system.”⁹⁶ Despite this, morals cases—adultery, blasphemy, buggery,

⁹³ See Kenneth Scott, “Counterfeiting in Colonial North Carolina,” *NCHR* 34 (October 1957): 467-482; Scott, *Counterfeiting in Colonial America* (New York: Oxford University Press, 1957).

⁹⁴ Watson, “Counterfeiting in Colonial North Carolina,” 186.

⁹⁵ Woodmason, *Carolina Backcountry*, 80-81.

⁹⁶ David H. Flaherty, “Law and the Enforcement of Morals in Early America,” in *Law in American History*, Donald Fleming and Bernard Bailyn, eds., (Boston: Little, Brown and Company, 1971), 223.

fornication, Sabbath-breaking, sodomy, and others—were very rarely heard in the county courts during this period, and only a few made their way to the Superior Courts in the Piedmont.⁹⁷

Even when these morals cases did appear in court, grand juries often failed to return indictments. It is tempting to conclude that many of these cases may have stemmed from personal vendettas, and they were, in the absence of any sort of evidence, difficult to prove, as long as nothing about the accused appeared suspicious to jurors. A grand jury, for example, failed in March 1766 to return a true bill against one James Patrick, accused of “have[ing] a venereal affair with a certain...Cow having a mottled face.” In the same session, Robert Johnson also avoided indictment for “that detestable and abominable Crime of Buggery,” also allegedly with a cow. Grand juries also failed to indict other men for such offenses as “Sabath breaking” by shooting a gun “at a Mark to the great profanation of the Lord” and “making oaths...to wit By God/By God/By God.” John Parker, a “Physician,” was acquitted in 1765 of an indictment that said he “did cohabit and carnally know” Hannah Green. The unfortunate Mary Silva was an exception—convicted of blasphemy in 1765, she faced the shame of being carted around Salisbury for an hour with “labells on her back & breast expressing her crime.”⁹⁸ No

⁹⁷ I do not include bastardy, or bearing a child out of wedlock, since it was typically adjudicated as a civil matter by this point. The purpose of so-called “bastardy” cases was to determine the paternity of children deemed “base-born” by the courts. The goal was not so much to police sexual activity (though these cases were surely embarrassing to the parties involved) but to ensure that responsibility for the care of children born of these unions would not fall on the government. Thus either the fathers or a separate party, or often both, would be held to a “bastardy bond” guaranteeing that they would care for the child. Children born out of wedlock were also often bound as apprentices to skilled men.

⁹⁸ *King v. Patrick*, *King v. Johnson*, *King v. Tucker*, *King v. Marcy*, March 1766, SDSC Criminal Action Papers, NCA; *King v. Parker*, March 1765, SDSC Minute Docket, 1760-1770, 109, NCA; Spindel,

records of her trial survive, so the reasons she was convicted remain obscure. She likely had spoken blasphemously in a public setting, like a tavern or in court itself, where there were numerous witnesses. Just as likely, the people in her community held her character in low esteem.

On the one hand, the relative paucity of morals convictions comports with similar trends in the colony as a whole, where the rates of morals crimes declined significantly throughout the eighteenth century.⁹⁹ At the same time, this development should not be construed to mean that morality were of little concern to the peoples of the Piedmont. Rather, matters of morality, particularly among peers, were typically handled within households and churches. Moravians, for example, dealt firmly (if not violently) with moral transgressors, as the example in 1763 of one of their number, a brewer and distiller named Feldhauser makes clear: despite his skill in keeping the brewing facilities “in the best of order,” he was expelled “with many tears” from the settlement after he “yielded to carnal desires and fell into all kinds of sin and shame.”¹⁰⁰ Quaker meetings had a similarly strong interest in enforcing internal discipline. In 1761, a young woman named Charity Wright was disowned by the Cane Creek Friends Meeting for “Carnal knowledge of Jehu Stuart.” While she denied the charge, a regional Quaker organization known as the Quarterly Meeting, having heard the case on appeal, ruled that “for want of Resisting

Crime and Society, 130. Interestingly, these morals cases seemed to appear on the docket in clusters, as evidenced by the dates.

⁹⁹ Spindell, *Crime and Society*, 56-58.

¹⁰⁰ Bethania and Bethabara Diaries, 1762, *MR*, 1:247.

to the Utmost of Her power his wicked and lustfull design was Overcome and defiled by him.” Her mother Rachel, having apparently publicly dissented from the decision of the Quarterly Meeting, was forced to apologize for her remarks in order to remain in good standing. When a group of Quaker men led by Regulator firebrand Herman Husband objected to the Meeting’s decision to forgive Rachel, they were themselves disowned. Several more women from the Cane Creek Meeting were expelled for attending the 1767 wedding of Cane Creek member Amy Adams to Husband.¹⁰¹ If the courts had little interest in policing morality, there were other community organizations who performed this function, but the rules they enforced, like the criminal law of North Carolina, never represented a community consensus. Rape cases also do not appear in the records for the Piedmont prior to the Revolution, a fact broadly in keeping with other colonies in British North America. Historian Sharon Block cites evidence that rape cases typically accounted for around three percent of all felonies in any given region, a fact that should not obscure the reality of the crime. Indeed, Block warns that recorded cases “probably represent just the tip of a very large iceberg of sexual coercion.”¹⁰²

The example of Charity Wright is telling. The Meeting acknowledged that the encounter was not consensual in the modern sense of the word, but the allegations of sexual assault, whether in court or elsewhere, were subject to the strictest possible

¹⁰¹ Kars, *Breaking Loose Together*, 114-115; Troxler, *Farming Dissenters*, 52-54. Both Kars and Troxler point to the importance of this incident in the formation of the so-called “Sandy Creek Association” that was instrumental in the early stages of the Regulator movement.

¹⁰² Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill, NC: University of North Carolina Press, 2006), 3n.

scrutiny. Though Wright was initially disowned by the women's Meeting of Cane Creek, contemporary understandings of consent and gender made it very difficult for a young woman in her situation to prove that she had resisted to the point that offense amounted to a rape. She may have been "defiled," a term that carried criminal connotations, but the innocence lost was hers, not Jehu Stuart's. As Block observes, contemporary understandings of sex and gender meant that for many women, rape was a "private trauma that did not translate into a believable public wrong."¹⁰³ Rape and other kinds of coercive sexual acts thus do not often appear in eighteenth-century court dockets, and we can only speculate what other crimes were punished outside the legal system. While recent scholarship (including this work) have emphasized the legal localism that prevailed in the colonial backcountry, the reality, as the case of Charity Wright demonstrates, may have been that the most meaningful sources of order and justice were outside the formal legal system altogether.

As the incident at Sugar Creek illustrates, by far the most significant issues confronting the legal system in the Piedmont were related to land. While the region had a reputation throughout the colonies as the "Best poor mans Country" owing to the abundance of land, settlers in the area quickly realized that such was not necessarily the case. Beginning in the 1740s, large land speculators, including Henry McCulloch, George Augustus Selwyn, and North Carolina royal governor Arthur Dobbs had amassed massive tracts of land in the southern Piedmont. Everything north of latitude 35°34' belonged to

¹⁰³ Block, *Rape and Sexual Power*, 1.

proprietor Lord Granville, who, alone among the heirs to the original Lords Proprietors of North Carolina, had retained his claim to a vast swath of land. Conflicting claims caused confusion among the land agents of the respective owners, whose efforts to protect their interests contributed to political discord in the colony in the 1750s and 60s.¹⁰⁴ So when elite North Carolinians complained about disorder and unlawfulness in the region, whatever concerns they had for social order in the region dovetailed with their concerns about the security of their landholdings. Settlers also worried about land. As one historian has recently observed, the problem faced by most small farmers in North Carolina's Granville District was not the price of the land, which was relatively inexpensive at about five shillings per acre. Rather, settlers had to contend with "the dishonest and abusive manner" in which the lands were administered.¹⁰⁵ Small farmers had little influence over the mechanisms of power in the colony, and while many had faced similar circumstances in Pennsylvania and Virginia, they felt, with justification, that the levers of power were against them. This was not a debate over abstract political rights. As Lord Granville himself wrote to his agents in North Carolina in 1756:

Great and Frequent Complaints are Made to Me of the Persons you Employ to receive Entries and make Surveys in the back Countries. It is their Extorsions, and not the regular Fees of Office...which is the Cause of Clamor from my Tenants. Insinuations are made too, as if those Extorsions were connived at by the Agents; for otherwise, it is said, They could not be Committed so repeatedly and barefacedly.¹⁰⁶

¹⁰⁴ Ekirch, *Poor Carolina*, 127-128.

¹⁰⁵ Troxler, *Farming Dissenters*, 3.

¹⁰⁶ Lord Granville to Francis Corbin and Benjamin Wheatley, April 18, 1756, Granville District Papers, NCA.

The incident in Rowan County was the culmination of a running conflict over land that had trans-Atlantic as well as regional implications. It involved angry settlers who had—like Frohock and the Alexanders—recently arrived in the region, mostly from Pennsylvania.¹⁰⁷ As sociologist Kai Eriksen observed in his study of Puritan New England, “[t]he only way an observer can tell whether or not a given style of behavior is deviant...is to learn something about the standards of the audience which responds to it.”¹⁰⁸ In the case of the North Carolina Piedmont, though, historians must consider multiple audiences. The region’s inhabitants, all of whom were recent arrivals, lacked a shared set of standards, and, more important, they found themselves within a polity—North Carolina—controlled by an emerging elite with whom they had little in common. This is not to suggest that the Piedmont was notably unlawful, but rather that its inhabitants held different assumptions about the moral underpinnings of the law, and different standards of what constituted order, from colonial leaders and their proxies in the region. A number of historians have sought to delineate the differences between the backcountry inhabitants and coastal elites, usually in an attempt to explain their significance in light of the origins of the Regulation. Marjoleine Kars, in particular, has described an oppositional culture in the region, one firmly rooted in the “insurgent climate created by the Great Awakening.” Their religious sensibilities were particularly offended by the “slow separation of morality from economics that characterized (and

¹⁰⁷ Robert Ramsay, *Carolina Cradle*, 138-145.

¹⁰⁸ Kai Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: John Wiley and Sons, 1966), 6.

enabled) the developing capitalist order.”¹⁰⁹ This cultural divide was further exacerbated by economic differences, in particular differing standards of land ownership. As Vickers has written about backcountry conditions, “squatting *was* customary...and groups of settlers whose titles to their farms were challenged by nonresident proprietors...invoke[d] a degree of moral economy in self-defense.”¹¹⁰

A. Roger Ekirch has argued that observed that the “backcountry elite” that had emerged in the Piedmont by the 1760s was “more homespun in its origins, less conspicuous in its wealth, less experienced in its politics, and, in all probability, more avaricious in its temperament” than their eastern counterparts.¹¹¹ These land speculators, merchants, tax collectors, sheriffs, and others were the men who sought to impose order on the region, and who became the targets of resistance. Crucially, these “homespun” elites had ties with well-connected easterners, which meant that they had leverage to dictate—or to attempt to dictate—the terms of law and its enforcement in the Piedmont.

But the enforcement of law in the region was always contested. On September 8, 1768, the *Virginia Gazette* reported that a sea captain named Isaac Waldron arrived in Williamsburg from Brunswick, where news had recently arrived of a disturbing incident in Salisbury, over 200 miles distant. According to reports, “about 300 of the Back Inhabitants” in Orange County had assembled and marched to Salisbury, where they

¹⁰⁹ Kars, *Breaking Loose Together*, 5-6. The importance of religion in the North Carolina Piedmont is also a prevailing theme in Troxler, *Farming Dissenters*.

¹¹⁰ Vickers, “Competency and Competition,” 18.

¹¹¹ Ekirch, *Poor Carolina*, 169.

“broke open the Gaol” in order to rescue a “few notorious horsestealers.” After freeing their friends, they set fire to the building, which was “entirely consumed to ashes,” and proceeded to march home in “triumph...not meeting with any interruption all the while, as the people were not able to oppose them.”¹¹² Such incidents served to enhance the reputation of the Piedmont as a lawless region populated by “banditti” who operated outside the bounds of law. So when the Regulator movement hit full stride in the late 1760s, it was difficult to tell the difference (as many modern historians do today) between armed mobs seeking to free accused felons and “farming dissenters” who organized to resist oppression. Thus the Regulation, and even, as Chapters Three and Four will argue, the course of the Revolution itself, were seen by all parties involved as contests over legal legitimacy. This is not suggest, as historian Bernard Bailyn famously did, that the Revolutionary era, and indeed the Revolution itself, was “above all else an ideological, constitutional, political struggle.” This was a contest of force as much as of ideas, one in which first the colonial government and then the state vied to impose its will on dissenting, rebellious, or disorderly members of Piedmont society.¹¹³ Always, in this process, the colonial and state leaders relied upon the support of some residents of the region.

¹¹² *Virginia Gazette* (Purdie and Dixon) September 8, 1768. Unfortunately, there is no record of this incident in Superior Court documents.

¹¹³ Bernard Bailyn, *The Ideological Origins of the American Revolution*, enlarged edition (Cambridge: Harvard University Press, 1992), x.

One historian of the region has recently observed that “violence,” like religious foment, was “near the surface in the new and changing communities of the Piedmont.”¹¹⁴ But prior to the late 1760s, the region seems to have been no more violent than most backcountry regions in British North America, certainly no more so than South Carolina. Considerable, if episodic, resistance to law enforcement existed, however, and these episodes signaled to North Carolina’s political leaders that the region was dangerous, restive, and lawless. By the late 1760s, two visions of criminal justice contended in the North Carolina Piedmont, each of which characterized the region as a lawless space beset by opportunists and licentiousness. The one contended that the honest farmers of the region were set upon like sheep by rapacious elites. The other, wielding the power of the colonial government, sought to use this power to crush the other. Each, in short, argued that the other was criminal. Important ideas about sovereignty, localism, and justice itself were implicated in this dialectic, which reached a crisis point with the Regulation, the largest mass criminal act in the history of North Carolina before Reconstruction. North Carolina’s political authorities had an interest in exercising control over the region, in rationalizing its legal structures, in streamlining property rights, and, ultimately, in establishing control over its people. From the earliest settlement of the region, many of its inhabitants resisted some aspects of this process and embraced others that they deemed inimical to their interests.

¹¹⁴ Troxler, *Farming Dissenters*, xii.

CHAPTER III

“A HOST OF SCOUNDRELS...MADE INTREPID BY ABUSE”: CRIME, JUSTICE, AND THE REGULATORS

On July 31st, 1771, a crowd of the “reputable inhabitants” of the town of New Bern witnessed a public execution. According to a contemporary newspaper account of the incident, “Isaiah Thomas,” “Leonidas,” and “Mucius Scævola” went to a scaffold erected near the Craven County courthouse “with dejected, ghastly countenances.” The condemned remained mute as the county sheriff read a proclamation denouncing their crimes. Finally, the sheriff commenced the execution, and after subjecting them to “hanging for a few minutes,” he burned their remains before the scaffold. As the three victims were reduced to ash, onlookers filled the air with huzzahs for North Carolina governor William Tryon and King George. In the afternoon, the witness reported, the sheriff and other notables repaired to the nearby King’s Arms Tavern, where they “spent the Evening in Social Festivity.” Before they left the scene of the execution, they affixed an epitaph to the scaffold that read:

Beneath this Gallows three Traducers lie,
Who for their Crimes were justly doomed to die;
Leonidas, with Mucius of ill Fame,
And we the third Isaiah Thomas name.
Sworn Foes to Honour, Virtue, Truth, they fell,
And where they now reside we cannot tell.

An eighteenth-century reader would have found little especially unusual about this account. Even the public immolation of the executed, while not typically inflicted on white victims, was not an uncommon occurrence for enslaved victims. What was noteworthy on that July 31st was that the sentence of hanging was carried out not on people, but on three newspapers. It was printed words, and not human bodies, that were consumed on the scaffold in New Bern. “Isaiah Thomas,” “Mucius Scævola,” and “Leonidas” were the pseudonyms of writers who had criticized the conduct of William Tryon and his officers in suppressing the Regulator Movement, an 1760s agrarian reform movement in the North Carolina Piedmont which escalated through a series of violent encounters before reaching a bloody denouement in pitched battle at Alamance Creek in May of 1771. “Leonidas,” for example, levelled a series of withering “Queries” at Tryon in the *Massachusetts Spy*. Asking rhetorically whether the governor might have been better served by working toward “the strict and impartial administration of justice among your people” instead of taxing the province to construct an executive palace at New Bern, he charged that the Regulation had been caused by “robbers...judges, sheriffs and pettifoggers,” a collection of “banditti” that had oppressed the backcountry with Tryon’s support. Ultimately, he charged, the Regulators were driven “by intolerable and multiplied oppressions to defend themselves.”¹ For this affront, the crowd of New Bern notables condemned and destroyed Leonidas’ offending article.

¹ *Massachusetts Spy* No. 17, June 27, 1771. The eastern gentry that led the burning of the *Spy* may also have taken issue with the front-page article, an impassioned condemnation of slavery that characterized the institution as a “species of iniquity...and almost every Evil that can be named.” Tryon would never live down his role in the Regulation, at least among Whig leaders. In New York, where Tryon became governor in late 1771, Sons of Liberty used his alleged excesses in suppressing the Regulation against him. An effigy of Tryon hanged by a New York city crowd in 1776 was accompanied by a placard

While no one died outside the Craven courthouse on that July morning, this incident, so strange to modern readers, offers an intriguing glimpse of varying perceptions of the Regulator movement within the colony and beyond. By performing a pantomime execution on Tryon's critics his supporters in New Bern reenacted a ritual of criminal punishment that Tryon himself had visited on the bodies of several Regulators in the immediate aftermath of the conflict. But many throughout the colonies charged that the governor's actions left the real villains of the Regulator drama unpunished.² A few months later, for example, "Atticus" wrote in the *Virginia Gazette* that Tryon, either out of impetuosity or Machiavellian scheming, perhaps deliberately provoked the Regulators, who the writer condescendingly characterized as "deluded" rustics:

Sir, you were alike successful in the diffusion of a military spirit through the Colony and in the warlike exhibition you set before the public; you at once disposed the vulgar to hostilities, and proved the legality of arming, in cases of dispute, by example. Thus warranted by precedent and tempered by sympathy, popular discontent soon became resentment and opposition; revenge superseded justice, and force the laws of the country; Courts of law were treated with contempt, and

alleging that the governor had "shed the blood of an innocent and worthy citizen, when he had the command in North-Carolina." *Constitutional Gazette*, Mar. 23, 1776, quoted in Robert M. Parkinson, *The Common Cause: Creating Race and Nation in the American Revolution* (Chapel Hill: University of North Carolina Press, 2016), 207.

² Allegedly seditious and libelous newspapers and other printed materials were sometimes burned by the hangman in Britain and the colonies. The publication that led to the famous libel trial of John Peter Zenger in New York, for example, received this sentence, as did *North Briton 45*, a newspaper published by London radical John Wilkes that featured a critique of George III. Wilkes' arrest in 1763 received widespread notoriety in the American colonies, and the *Massachusetts Spy* claimed that the crowd in New Bern had "acted in humble imitation of [their] betters at home" when they gave their "poor harmless paper the same fate as the famed *North-Briton*. Quoted in Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York: Vintage Books, 1972), 197.

government itself set at defiance. For upwards of two months was the frontier part of the country left in a state of perfect anarchy.³

Atticus observed that each of the Regulators' transgressions had been punishable in a criminal court, but the governor's insistence on using the incident to assert his power—in the crucial context of the imperial crisis that began with protests against the Stamp Act—caused the Regulation to spiral into a bloody fiasco. “[R]evenge” thus “superseded justice, and in the end, Tryon, out of arrogance and a desire to flaunt his power in the backcountry, “vanquished...a host of scoundrels...made intrepid by abuse.”⁴ Atticus further criticized the summary hanging of one Regulator on the spot after the battle at Alamance Creek, and Tryon's decision to execute six other Regulators convicted of treason by a special court in Hillsborough.

These authors essentially argued that, however contemporaries felt about the actions of the backcountry Regulators, North Carolina officials acted unlawfully to one degree or another in suppressing them. More important, implicit in many of their criticisms is an assumption that the actions of the Regulators were not only justified in their actions in a moral sense, but that, to a point, they fit into a broad definition of legally legitimate resistance. Some even asserted, as did the Regulators themselves, that the uprising was in fact a justifiable, even inevitable response to the criminal behavior of

³ *Virginia Gazette*, November 7, 1771. The identity of “Atticus” is not settled, though nineteenth century historian Francis X. Martin named Maurice Moore, Jr., a superior court judge and leader of resistance to the Stamp Act in 1765. Moore, however, was despised by the Regulators, who referred to him by name in their petitions and threatened him with violence. William S. Price, Jr., “Maurice Moore Jr.,” in *Dictionary of North Carolina Biography* (Chapel Hill: University of North Carolina Press, 1991), 4:305.

⁴ *Virginia Gazette*, November 7, 1771.

local officials. As a contemporary Pennsylvania newspaper put it, when “those who are entrusted with the conduct of the affairs of the public, oppress the people...they, and not the people who resist them, are Rebels.”⁵ These issues, as seen in the previous chapter, were not new in the North Carolina backcountry, nor would they be resolved by the Regulation.

The narrative of the Regulator movement in the North Carolina Piedmont in many ways parallels the trajectory of similar backcountry risings in early America. Backcountry yeomen and small planters organized into “associations” to protest abuses and corruption by local officials. When their grievances went unaddressed—largely because the subjects of their accusations controlled the courts—Regulators resorted to violence, closing down backcountry courts, including the superior courts held in Hillsborough and Salisbury, in a series of efforts to “regulate” their oppressors. After several years of escalating tensions, Tryon, at the head of a militia drawn primarily from eastern counties, crushed an armed body of Regulators in a large battle near Alamance Creek in western Orange County, in May of 1771. Following the battle, Tryon and his militia stamped out the smoldering embers of the revolt, disarming farmers throughout the upper Piedmont and hanging seven men captured at Alamance, including one summarily on the battleground. With their movement in tatters, many former Regulators

⁵ *Pennsylvania Journal*, quoted in A. Roger Ekirch, “*Poor Carolina*”: *Politics and Society in Colonial North Carolina* (Chapel Hill: University of North Carolina Press, 1981), 201.

left the region for good, departing, as one account of the uprising puts it, “farther into the wilderness.”⁶

The events of the Regulation represent both the largest mass criminal act in North Carolina history before Reconstruction and a popular response to endemic criminal behavior by colonial officials. As the largest popular rising by backcountry whites in the North American colonies before the Revolution, it is important to any study of colonial North Carolina, but especially one focused on criminality. Still, the only book-length study of crime in colonial North Carolina does not directly address it.⁷

While few historians accept the romanticized notion that the Regulators rose in opposition to British tyranny, early histories of the conflict varyingly characterized it as a “peasant’s revolt” and as a first salvo in a long-running political dispute over representation between the backcountry and the tidewater regions of North Carolina. In the late twentieth century, historians focused on the causes of the conflict, with a series of studies fixing its origins in such disparate sources as class antagonism, Country Whig ideology, and the frustrated ambitions of middling planters in the backcountry.⁸ Despite

⁶ Introduction to William S. Powell, James K. Huhta, and Thomas J. Farnham, eds., *The Regulators in North Carolina: A Documentary History 1759-1776* (Raleigh: State Department of Archives and History, 1971), xxvi. (hereafter *RD*).

⁷ Donna Spindel, *Crime and Society in North Carolina, 1663-1776* (Baton Rouge: Louisiana State University Press, 1989).

⁸For the Regulation as a “peasant’s revolt,” see John Spencer Bassett, “The Regulators of North Carolina, 1765-1771,” in *Annual Report of the American Historical Association for the Year 1895* (Washington, D.C.: American Historical Association, 1894): 141-212. For the “regional” interpretation, see Hugh T. Lefler and Albert R. Newsome, *North Carolina: The History of a Southern State*, revised edition (Chapel Hill: The University of North Carolina Press, 1963), 161-178. Lefler and William S. Powell advanced the same interpretation in Lefler and Powell, *Colonial North Carolina: A History* (New York: Scribner, 1973). Marvin L. Michael Kay and Lorin Lee Cary have explained the Regulation as a class struggle in Kay, “The North Carolina Regulation, 1766-1776: A Class Conflict,” in Alfred F. Young, ed., *The American Revolution: Explorations in the History of American Radicalism* (DeKalb, Ill.: Northern

all of this scholarly interest, no monograph focusing on the Regulation appeared until 2002, when Marjoleine Kars stressed the importance of Protestant evangelicalism among the Regulators in *Breaking Loose Together: The Regulator Rebellion in Pre-Revolutionary North Carolina*. The Regulators also played a central role in Wayne E. Lee's study of violence in revolutionary North Carolina, which analyzed the actions of the Regulators and their adversaries in light of contemporary norms of acceptable violence.⁹

This chapter will focus on the Regulation as a matter of criminal justice. On the one hand, as one historian has written of the Stamp Act protests in North Carolina in 1766, this approach reveals the inadequacy of peace-keeping and "law enforcement practices" to quell popular uprisings in revolutionary North Carolina.¹⁰ At crucial moments in the Regulator rising, the institutions and individuals charged with maintaining the peace in the Piedmont—the courts, sheriffs, militia, and others—proved entirely lacking in the face of widespread popular unrest. They were simply overwhelmed

Illinois University Press, 1976), 71-123, and Kay and Cary, "Class, Mobility, and Conflict in North Carolina on the Eve of the Revolution," in Jeffrey J. Crow and Larry E. Tise, eds., *The Southern Experience in the American Revolution* (Chapel Hill: The University of North Carolina Press, 1978), 109-51. James P. Whittenburg complicates this thesis in "Planters, Merchants, and Lawyers: Social Change and the Origins of the North Carolina Regulation," *William and Mary Quarterly* 34, no. 2 (April 1977): 215-38. Ekirch rejects it outright in a chapter on the Regulators in *Poor Carolina*, 161-211, and "The North Carolina Regulators on Liberty and Corruption, 1766-1771," *Perspectives in American History*, Donald Fleming, ed. (Harvard University: The Charles Warren Center for Studies in American History, 1977-1978), 197-256.

⁹ Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville, Fla.: The University of North Carolina Press, 2001). Carole Watterson Troxler also emphasizes the role of religion, as well as land tenure, in *Farming Dissenters: The Regulator Movement in Piedmont North Carolina* (Raleigh: North Carolina Department of Cultural Resources, 2011).

¹⁰ Spindel, "Law and Disorder: The North Carolina Stamp Act Crisis," *North Carolina Historical Review* 57, no. 1 (January 1980): 1-16.

by the weight of numbers, and, lacking the support of ordinary North Carolinians, they were powerless to contain the protests. At the same time, it is worth asking why this was so. Why did the Regulation appeal to so many people in the Piedmont? While it is impossible to quantify the level of support for the Regulator movement, many colonial officials, including those in the Piedmont itself, thought that the entire region, to quote one beleaguered official, “the very nest and bosom of rioting and rebellion.”¹¹ This, as discussed in the preceding chapter comported with a perception many colonial leaders already held of the region, and the Regulation was evidence that it needed to be brought to heel.

But the failure of the colony’s criminal justice system in the face of mass protest reveals a deeper reality about North Carolina society in the Revolutionary era. The ordinary North Carolinians that were the driving force behind the Regulation agreed with the colony’s elites that the region was in many ways an anarchic, lawless backcountry, but they saw the most egregious offenders not among the crowds that harassed tax collectors, lawyers, judges, and other officials. These officials were themselves behaving as criminals, abusing their positions of privilege and power to exploit and extort money from farmers in the region. In short, the colony’s criminal justice system failed to rein in the abuses of these men because these “cursed hungry caterpillars...eating out the bowels of [the] commonwealth” *were* the criminal justice system. Studying the Regulation through the lens of criminal justice, then, leads to several interrelated conclusions. First,

¹¹ Edmund Fanning to William Tryon, April 23, 1768, in William S. Saunders, ed., *Colonial Records of North Carolina* (Raleigh: Josephus Daniels, 1890), 7:713.

it provides vital context for the frustrations of the Regulators, helping to explain why the movement spiraled toward a bloody end. Second, it underscores the extent of social and political inequalities in colonial North Carolina society, particularly in access to justice. These inequalities persisted—worsened, in many ways—through the Revolution. Finally, an emphasis on criminality also contextualizes the Regulation as part of a broader trend of integrating the Piedmont—a backcountry region—into North Carolina’s political and economic structures. That this process was never equal, involving winners and losers, as other historians have observed, was a central cause of the Regulation, and it helped shape the course of the American Revolution in the decade that followed.¹²

This chapter proceeds along a narrative framework with a focus on several key incidents in the Regulation. Each of these incidents centered on the process of administering criminal justice in the region, and while the inequalities in this process were manifest, to point out the lack of fairness barely begins to explain Regulator frustrations. As historian Wayne E. Lee has observed, the chronology of the movement, beginning in 1766, is crucial to understanding it. This is even more true given a focus on criminality, because it allows us to examine the ways in which legitimate behavior gave way to transgression. It also reveals much about the nature of power in the Revolutionary South. Lacking in this account, as in all studies of the movement, are the acts of day-to-day organization and resistance that must have accompanied the Regulator experience in

¹² George Sims, “Address to the Inhabitants of Granville County,” in William K. Boyd, *Some Eighteenth-Century Tracts Concerning North Carolina* (Raleigh: Edwards and Broughton Co., 1927), 190. Kars, in *Breaking Loose Together*, particularly emphasizes the inequalities and injustices that accompanied the integration of backcountry North Carolina into the colony and the broader Atlantic economy.

the backcountry. The Regulators published their grievances in a series of numbered public advertisements, and colonial authorities recorded their perceptions of events in official proclamations and private correspondence. The movement can be further traced through the court records, especially depositions and other records. These sources speak to the palpable sense of disillusionment felt by the Regulators as they came to understand the inequalities of the colony's criminal justice system. The documents also reveal the anxiety that gripped colonial authorities—many of whom had led the protests against the Stamp Act and other imperial impositions—who feared that the colony was lurching toward a sort of revolution that they neither envisioned nor desired.

Origins of the Regulation

In an address written “for the common people to understand,” and apparently read before the Granville County court in 1765, a local schoolmaster named George Sims articulated many of what would become the signal grievances of the Regulators. He pointed to several “abuses which we suffer by those empowered to manage our public affairs,” the “clerks, lawyers, and sheriffs” whose power emanated from the county courthouse. Sims accused these men of defrauding people who did business before the court in several ways, the most egregious of which was charging fees far in excess of those stipulated by law. Court officials, including clerks, judges, and attorneys, received fees for dozens of actions. Typical fees were recording a plea (one shilling and one pence) and certifying a probate for a will (one shilling, six pence.) These fees were

stipulated by a 1748 law, and were, depending on the action, payable from the colony or from those who had business with the courts.¹³

In his address, Sims voiced a ubiquitous complaint of backcountry farmers. Referring to the fifteen-shilling statutory limit for court fees, Sims asked his listeners: “Which of you has had your business done for 15s? Do not the lawyers exact 30s for every cause, and 3, 4, or 5 pounds for every cause...attended with the least difficulty?” Sims also protested the seizing of property to satisfy debtors, a practice known as distraint. This, he charged, was even more blatantly corrupt, as sheriffs would seize lands worth “four or five hundred pounds” and sell them for far less to the “same villains who have taken your negroes and other personal estate, and have the county’s money in their hands.” In these ways, he argued, courthouse officials “rob the country to support themselves in...damned extravagance.” Sims concluded that “if these things were absolutely according to law, it would be enough to make us turn Rebels.” But they were not legal—in theory, at least, Sims and other like-minded men had the law on their side. Therefore, he warned, they should “do nothing against the known established laws of our land.” Sims gave voice to what one historian has described as a “sober demand for reform,” one concerned with legality and aimed at punishing criminality.¹⁴ The preoccupation with legality continued to characterize Regulator publications and, to a point, actions, throughout the movement. Far from knee-jerk localists, they in fact sought

¹³ Acts of the North Carolina General Assembly, 1748, in SRNC 23: 277-78.

¹⁴ “An Address to the People of Granville County by George Sims,” in William K. Boyd, ed., *Some Eighteenth Century Tracts Concerning North Carolina* (Raleigh: Edwards & Broughton Co., 1921), 183-191; Lee, *Crowds and Soldiers*, 50.

the support of the colonial state in regulating the criminal behavior of corrupt officials who controlled the administration of justice in the backcountry. As a leading Regulator spokesman put it, Piedmont farmers had been encouraged to settle and improve their lands, but had been through patently illegal means, “robed of it all by a few roguish Individuals.”¹⁵

As the “Citizens of Rowan and Orange Counties” wrote in a petition to the North Carolina House of Representatives, to “Gentlemen Rowling in affluence, a few shillings per man, may seem trifling.”¹⁶ But scholars have confirmed the Regulator claim that excessive court fees were a real burden on many backcountry farmers. In their study of economic conditions in the backcountry before the American Revolution, historians Marvin L. Michael Kay and Lorin Lee Cary found that the average value of estates held Orange County families who fell in the middle 30% was £92:7.¹⁷ The price of “three, four, five pounds a cause” illegally demanded by some court officials was thus very steep—ruinous, even—for many Piedmont families. The problem was especially acute given the severe currency shortage that plagued the colony in the decade before the Revolution. The average per capita tax (only a poll tax, not counting county and parish taxes) in North Carolina was seven and a half shillings, but one contemporary estimated that the average North Carolinian possessed only five shillings of liquid currency. By this

¹⁵ Herman Husband, *An Impartial Relation of the First Rise and Cause of the Recent Differences in Public Affairs* (unknown publisher, 1770), 77-78.

¹⁶ “Petition of Citizens of Rowan and Orange Counties,” October 4, 1768, in *RD*, 187-188.

¹⁷ Kay and Cary, “Class, Mobility, and Conflict,” 115.

measure, even Edmund Fanning, convicted in 1768 for extorting two extra shillings to register a deed, was exacting a heavy price for a fairly routine service.¹⁸ It is difficult to ascertain the veracity of Regulator claims in many cases, but it is clear that their accusations of fraud and extortion were serious.

Sims' address evinces a preoccupation with legality—not just morality—that characterized the entirety of the movement. This concern is reflected in the name they chose for themselves. Historians have generally agreed that the North Carolina Regulators adopted their name from a parallel movement in South Carolina that targeted backcountry highwaymen, horse thieves, and other criminals whose acts had previously gone unpunished due to the lack of courts and other law enforcement institutions in that colony's backcountry. The political connotations of the term "regulator" itself dated at least to the English Civil War. By the eighteenth century, the word often described men—some Regulator publications make the gendering of the word explicit—who banded together to enforce community norms outside the formal legal system.¹⁹ One account published in a New York City newspaper in 1753 describes a group of "generous young Men...stiled *Regulators*," who visited rough justice on an abusive husband and other undescribed transgressors in New Jersey.²⁰ The practice was widespread to the

¹⁸ Alan Watson, "Counterfeiting in North Carolina: A Reappraisal," *NCHR* 79, no. 2 (April 2002): 189, (hereafter *NCHR*). Under the old English currency system, twenty shillings equaled one pound.

¹⁹ See, for example, "Considerations Touching the Dissolving or Taking away the Court of Chancery" (1653), 29; "A Friendly Discourse Concerning Profane Cursing and Swearing" (1697), 12; Kars, *Breaking Loose Together*, 2.

²⁰ Richard Maxwell Brown, *The South Carolina Regulators* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1963), 187n.

point of pervasiveness in early America and beyond. Indeed, historian Ashraf Rushdy has written that “lynching” and “lynch law” were the natural offshoots of “regulators,” whose main contribution to American culture was “the idea of a community’s right or obligation to control those who violate its understood values and mores.”²¹ In the spring of 1768, a frightened Orange County official informed William Tryon that a group of backcountry protestors in Hillsborough had chosen the appellation “regulators” for themselves, adding that “by Lawyers they must be termed rebels and Traitors.”²² Given this, it is likely that the Regulators assumed this title at the point when they began to perceive that their efforts at legal and political protest had not borne fruit.

Historian Barbara Clark Smith has recently observed that the Regulators felt morally and legally justified in asserting their right to be “present in the execution of the law.” Through their protests—by refusing to pay taxes, resisting the confiscation of property for debt, and even refusing to allow their peers to face criminal trial—they sought to make their “notions of fairness and right felt within their society.” There actions were typical, according to Smith, of a “common ground of colonial politics,” one in which ordinary men could act “after the fact” in shaping the way that laws were enforced.²³ In this context, even the riots of the Regulators carried a certain air of legal legitimacy, albeit one that was highly contested. More than a generation of historians

²¹ Ashraf H.A. Rushdy, *American Lynching* (New Haven: Yale University Press, 2012), 98.

²² Fanning to Tryon, April 23, 1768, *CRNC* 7:714.

²³ Barbara Clark Smith, *The Freedoms We Lost: Consent and Resistance in Revolutionary America* (New York: The New Press, 2010), 2-3.

have accepted the view, most famously articulated by E.P. Thompson, that rioters in England acted within a certain rational framework, one informed by their belief that the targets of their rioting had violated norms held in common. These norms encompassed a “moral economy” that frequently ran afoul of the market-based changes that affected ordinary people. Thompson, indeed, argues that the term “riot” is insufficient for explaining these actions, so complex were their origins.²⁴ Pauline Maier argues that Revolutionary-era uprisings over local issues were “extra-institutional in character more often than they were anti-institutional: they served the community where no law existed, or intervened beyond what magistrates thought they could do officially to cope with a local problem.”²⁵ But in the North Carolina backcountry, the “magistrates” were the problem. They had, in the mind of the Regulators, not only failed to uphold justice, but were themselves criminals, “Monsters in iniquity,” according to a Regulator petition.²⁶ In the North Carolina Piedmont, then, “riot,” a crime, was in fact part of “regulation.”

But if the Regulators were “reluctant revolutionaries” and “careful rioters” who sought change through legal means before resorting to armed uprising, they were characterized by colonial authorities—even some, like Tryon, who privately conceded that the Regulators had a point about corruption among public officials—as brigands and

²⁴ E.P. Thompson, “The Moral Economy of the English Crowd,” in *Thompson, Customs in Common: Studies in Traditional Popular Culture* (New York: The New Press, 1993), 185-258. Thompson analyzed “food riots,” but his interest in the riot as a fundamentally political act with deep roots in English popular culture remains relevant.

²⁵ Maier, *From Resistance to Revolution*, 5.

²⁶ “Regulators’ Advertisement No. 11” in *RD*, 115.

outlaws.²⁷ This clash of opposing notions of criminal justice becomes evident in several pivotal events during the Regulator movement, which lasted roughly from 1766 to 1771. These events—particularly riots in Hillsborough in 1768 and 1770, the arrest of Regulator leaders Herman Husband and William Butler in 1768, and the trial and execution of a handful of selected Regulators in 1771—demonstrate the ways in which the definition of criminal justice was contested in the region during the Regulation. They also illustrate how the movement itself claimed a legal legitimacy that threatened a colonial elite, giving them cause to rally around royal governor William Tryon, a colonial official whose efforts to enforce controversial British policies in the 1760s otherwise set him at odds with those same elites. In other words, claims to legal legitimacy on the part of the Regulators made them even more dangerous in the eyes of their opponents.

The Emergence of the “Regulation”

Political and social turmoil was a near-constant reality in the North Carolina backcountry, but most historians have traced the beginnings of the Regulation to the Sandy Creek community in Orange County (present-day Randolph County), where groups of landholders complained of a host of abuses related to taxation and corruption of local officials, who they accused of embezzling and extorting considerable sums of money. The generally accepted leader of the Sandy Creek Association, formed to publicize and protest these abuses, was Herman Husband, who had settled in the area after leaving the Cane Creek Meeting described in the preceding chapter. A prominent

²⁷ Kars, *Breaking Loose Together*, 5; Lee, *Crowds and Soldiers*, 46.

land speculator, religious nonconformist, and inveterate political gadfly, Husband's involvement in the protests exemplifies the intersection between religious radicalism and the political protests of the Regulators. The Sandy Creek Association met multiple times to compile a list of complaints, and after publicly airing their grievances at a session of the Orange County court and in a published "Advertisement," it appears to have dissolved. Other, like-minded organizations formed throughout Orange County and elsewhere in the Piedmont.²⁸ The complaints made public by the Sandy Creek associators reflected concerns held throughout the region, and the movement begun there spread quickly from county to county. Groups of farmers who began to call themselves "Regulators" attempted, through petitions, grand jury presentments, and public meetings, to call attention to the litany of abuses they perceived in backcountry life.²⁹ These conventional protests, which emerged in Anson and Mecklenburg counties in addition to their epicenters in Orange and Rowan, were generally disregarded by officials, many of whom, of course, were the targets of the Regulation in the first place. Orange County clerk of court, militia captain, and assemblyman Edmund Fanning, for example, first promised to attend a public meeting at Deep River called by the Sandy Creek associators in 1766. When neither he nor other Orange County officials showed up, the Regulators

²⁸ Kars, *Breaking Loose Together*, 111-129.

²⁹ Troxler, *Farming Dissenters*, 60-61. Edmund Fanning acknowledged in a letter to Tryon in April of 1768 that the "rebels and Traitors" who had been "meeting, conspiring, and confederating" in Orange County called themselves "regulators." This is the first mention in the records of the use of the name, though, given its use in South Carolina, it was likely in use before this time. *CRNC*, 7:714. For the sake of clarity, I use the term to refer to the Sandy Creek Association and others whose actions predated the known use of the word.

recognized that “Colonel Fanning Looks on it as an Insurrection.” Fanning’s excuse was significant—he objected, Husband claimed, to the use of the word “judiciously” in the Regulators’ first “Advertisement,” which was printed and read before the Orange County court at Hillsborough. According to Husband, Fanning and other officials thought the word “signified...a Court of Authority.” Fanning also objected to the meeting’s location—a mill house outside of Hillsborough.³⁰ Husband and the Regulators understandably saw these as flimsy excuses, but Fanning’s objections speak to the importance both Regulators and court officials assigned to legal legitimacy: by using a word that connoted (or could connote) a “Court of Authority,” the Regulators laid equal claim to the administration of justice in Orange County. By attending a meeting at the mill, a social and economic center of Orange County—Fanning would have given a degree of recognition not just to their grievances, but to their right to challenge the power of the courts. These were direct threats to the authority to administer justice—and profit from its administration—in Orange County, and Fanning thus framed even this relatively modest challenge as an “insurrection,” by definition criminalizing it.³¹ He responded publicly by reading a speech in court he claimed would “silence” the Regulators, but did not make it available to them. Its contents are equally lost to historians.³² Thus a protest lodged through conventional channels, and within the bounds of English political and

³⁰ *Impartial Relation*, 12.

³¹ Ibid. Husband wrote that he later learned that Fanning and his cronies “pretend to have mistook the word for judicially,” an excuse that the Regulators did not find very compelling. “Our original Papers were in too many Hands,” he wrote, “to make it take.”

³² *Impartial Relation*, 13.

legal tradition, was dismissed as illegal due to the threat it posed to powerful men. Still, as was the case throughout the Regulation, there was significant diversity of opinion in how Piedmont men and women could get redress for their grievances. Husband, a pacifist who probably did not directly participate in any violent incidents, worried that the new association that spread through the region in 1768 was “too hot and rash, and in some Things not legal.”³³

The Hillsborough Riot and the Crisis of 1768

As seen in Chapter Two, riots in defense of perceived rights were not uncommon in the North Carolina Piedmont. As the example of the Sugar Creek “War” reveals, these crowd actions frequently stemmed from a collective sense of grievance not readily addressed through the colony’s legal system. The catalyst for the first major escalation of the Regulator movement was the seizure of a horse by the Orange County sheriff, a man named Hawkins, in April of 1768. Under English common law, sheriffs and other public officials were empowered to seize the property of delinquent taxpayers, a practice known as distraint. Once confiscated, the property, which could include lands, chattels, and enslaved people, could be sold at vendue, or public auction, with the proceeds used to satisfy the debt. This action—which could be carried out to collect personal in addition to public debts—often served as a flashpoint for crowd action throughout the colonies, and George Sims made it a central concern in his Granville County address. Small landholding farmers almost universally viewed the practice as a grievous imposition and

³³ Ibid., 16.

a threat to their prized economic independence.³⁴ Tryon himself observed that “the distresses...many families in this colony in particular experience, proceed in some measure from the receivers of the public taxes being frequently under an obligation to distrain on the effects of the inhabitants for [taxes.]” Although the value of the items seized was seldom sufficient to satisfy the tax obligation, Tryon wrote, “by their sale the owner will be greatly distressed if not ruined.”³⁵ Tryon’s letter accompanied a petition from the Assembly to allow the emission of paper currency in the colony, as he blamed (with considerable justification) the Parliament-enforced currency shortage for much of the turmoil in the backcountry. But if Tryon and other officials correctly assessed the situation in the Piedmont, their understanding of it did not materially affect their response to it. The identity of the individual whose “Mare, Saddle and Bridle” was seized is unknown, but the Regulators later claimed that he was “one of the Regulators going to Hillsboro on some private business.”³⁶ The man was very likely among a group of “Inhabitants of the West Side of the Haw River” who had resolved not to pay their taxes until they received a “true regulation with our Officers” concerning the fees they collected.³⁷

³⁴ David P. Szatmary, *Shays’ Rebellion: The Making of an Agrarian Insurrection* (Amherst: The University of Massachusetts Press, 1980), 33-34. As Szatmary shows, distraint, whether for taxes or private debts, was especially galling because it raised the prospect of poverty and tenantry among people who prized economic independence.

³⁵ Tryon to Earl Shelburne, February 2, 1768, *CRNC* 7:678-679.

³⁶ “Regulators’ Advertisement No. 11,” *RD*, 119.

³⁷ “Regulators’ Advertisement No. 4,” *RD*, 79.

In this context, the distraint was not only provocative, and a conscious attempt by Fanning and other officials to escalate the conflict—it was understood as a highly irregular, even criminal act that amounted to horse stealing. As Marjoleine Kars has written, that the “Regulator” was riding the mare at the time it was distrainted probably further inflamed the countryside—contemporary legal authorities held that property while in use was privileged from distraint, a legal tradition that probably stemmed from a desire to avert confrontations.³⁸ This may have been a particularly egregious instance, but regardless of the circumstances, the Regulators in Orange County viewed the actual practice of distraint as little better than theft. In a petition that postdated the attack on Sheriff Hawkins, a group of Regulators explained the injustice of the practice to Tryon:

The Sheriffs [made] such Distresses, as are seldom known—Double, Treble, nay even Quadruple the value of the Tax or debt was frequently distrainted, and such their seizures hurried away to Hillsborough, there to be disposed of, and so iniquitous were they in these Practises, that by taking contrary roads or some other indirect Methods the Effects could never be recovered, altho' they were followed with the money in a few hours after, nor could we ever learn that they returned any Overplus.³⁹

It was widely believed that sheriffs often sold distrainted property at a bargain price to other officials, compounding the injustice of the seizure. That they decried the fact that sheriffs used “contrary roads” to avoid angry crowds strongly suggests that they viewed crowd action to resist distraint as justified, if not essentially legal. Husband claimed the

³⁸ Kars, *Breaking Loose Together*, 243n.

³⁹ “Regulators’ Advertisement No. 11,” *RD*, 118.

seizure, under the circumstances, was an attempt to “try or exasperate the...enraged Populace.”⁴⁰

In any case, all parties agreed that the distraint of the mare inflamed the countryside. Husband wrote that “Sixty or Seventy” men assembled to ride to Hillsborough and recover the mare. In his account, the men “fired a few Guns at the Roof of Colonel Fanning’s House, to signify they blam’d him for all this Abuse.”⁴¹ John Gray, a local official and officer in the Orange County militia, claimed in a letter to Fanning that the “Mob” was closer to one hundred men, and elaborated that, in rescuing the mare, the rioters tied up Sheriff Hawkins, “treated sundry of the Inhabitants of the Town very ill & crowned the whole by shooting two or three Bullets through your House.”⁴² Another account by the Regulators stipulated that the crowd had come to Hillsborough armed mostly with “clubs, staves...and cloven (i.e., disabled) muskets.” They admitted shooting at Fanning’s house, but not by way of protest—rather some “heated unruly spirits” among them fired at the dwelling when an unnamed “Gentleman” levelled two pistols at the crowd from the doorway. Once they had retaken the mare, they assured the governor, they departed the town “without doing further damage.”⁴³ Recent historians of the Regulation have parsed these contradictory accounts to conclude that the incident at

⁴⁰ *IR*, 21.

⁴¹ *Ibid.*

⁴² John Gray to Edmund Fanning, April 9, 1768, *CRNC*, 7:705-706.

⁴³ “Regulators’ Advertisement No. 11,” *RD* 119. For connotation of “cloven” as “disabled,” see Lee, *Crowds and Soldiers*, 245-46n.

Hillsborough was typical of eighteenth-century crowd actions in the Anglophone world. By tying up the distraining sheriff, the Regulators may have enacted a backcountry version of a “skimmington,” a public ritual in which men or women who offended public mores were forced to ride—usually facing rearward—a horse or donkey through town. The restrained attack on the property of elite targets of riots were also not out of the ordinary—the events at Hillsborough, in fact, had been only marginally more violent than the protests against the Stamp Act in Brunswick and Wilmington just three years earlier.⁴⁴ Even accepting the Gray’s unfriendly account of John Gray at face value, the events of April 8 hardly amounted to an insurrection.

But Fanning’s response was to characterize the affair in Hillsborough as a prelude to a broader and more radical rebellion. In his letter to Gray, he characterized the conduct of the “Riotters” as “extraordinary” and ordered to raise a militia to rid his “favourite County” of the “Odiousness of rebellion & disobedience to Law.” Moreover, he immediately sought a warrant for the arrest of the leaders of the crowd, and dispatched a letter to Tryon, painting the incident as “rank rebellion” and warning that the “contagion” was “extending itself far and wide through this part of the Province.” He urged Tryon to take command of militia from the eastern counties and “give them Battle immediately.” With such a show of force, he predicted, the “show will be over,” and the threat to his power, and Tryon’s, would be destroyed.⁴⁵ The decision to call out the Orange County

⁴⁴ Edmund S. and Helen M. Morgan, *The Stamp Act Crisis: Prologue to Revolution*, revised edition (New York: Collier Books, 1962), 211-212; Donna J. Spindel, “Law and Disorder: The Stamp Act Crisis,” *NCHR* 57 (January 1980): 8-13; Lee, *Crowds and Soldiers*, 35-45.

⁴⁵ Fanning to Tryon, April 23, 1768, *RD* 84-86.

inadvertently provided Fanning (and historians) with an opportunity to gauge the extent of public support for the Regulators and their actions—only 120 men turned out under arms. Militia captains reported that even most of these men “either openly declare in favour of the Mob or...chose to stand neutral.” If the “spirit of rebellion and disaffection to Government” was not rampant in Orange County before the riots, Fanning’s response galvanized it, creating a serious crisis of authority in the region.⁴⁶

Tryon’s response to the situation typified what one historian has called a “two-handed brand of authoritarian paternalism.” In a series of letters, he ordered militia officers from several counties to prepare to assist Fanning if the situation escalated, and that a proclamation be read ordering the Regulators to disperse. At the same time, he sought to restrain Fanning from taking precipitous action. As he did throughout the Regulator crisis, he promised that legitimate complaints, expressed through petitions to the legislature, would receive his support once “Order and Tranquility” were restored to the region.⁴⁷

As the governor pondered his response to this escalating crisis, he received a report of another disturbing incident, this one occurring at the Anson County courthouse, about 130 miles southwest of Hillsborough. Samuel Spencer, Anson clerk of court and Assembly representative, wrote Tryon that his county was beset by “unparalleled tumults, Insurrections and Commotions.” According to Spencer’s account, a group of “transient

⁴⁶ Letter from Francis Nash and Thomas Hart to Edmund Fanning,” *CRNC* 7:710.

⁴⁷ Lee, *Crowds and Soldiers*, 54. Tryon’s response is recorded in several documents dated April 27, 1768. These include two letters to Fanning, a general order to colonial militia officers, and minutes of the colony’s executive council. All are published in *RD*, 88-92.

Persons, New Comers, Desparadoes, and those who have not paid a tax for several years past” had, led by an unnamed rabble-rousing local politician, offered violent resistance to the county’s sheriff as he collected taxes. In April, about forty men, “armed with Clubs and some Fire Arms,” forced the county court to adjourn. When officials attempted to reopen the court, they “took the...justices off the Bench, and entirely obstructed the Proceedings of the Court.” Having control of this center of legal activity in the county, they proceeded to assert their legal authority, resolving to continue to resist tax collectors and declaring their “right to know what Bills were sent to the Grand Jury.” The second demand would have established significant influence over the administration of criminal justice at the county level—this was precisely why grand jury proceedings were typically private in English legal tradition. As one Massachusetts official told a grand jury in 1768, “People out of Doors will influence your Conduct if they know the Business you are engaged on.”⁴⁸ An “association” enclosed with Spencer’s letter stated their grievances and resolved to emulate the actions of the Hillsborough crowd in response to what they deemed unjust distrains. They even announced their determination to “set...at Liberty” anyone who was jailed for nonpayment of taxes. While admitting that the crowd promised not to harm him, Spencer was struck by the “Arrogance” of these men, particularly in their assumption of the legal imprimatur of the bench.⁴⁹ Tryon responded to events in Anson County as he had in Hillsborough—he condemned the criminal

⁴⁸ Smith, *The Freedoms We Lost*, 23. In North Carolina, as in many other colonies, grand jurors were chosen by sheriffs, one of the many powers held by these important officials.

⁴⁹ Samuel Spencer to Tryon, April 28, 1768, *RD*, 92-96.

behavior of the rioters, empowered Spencer to call out the county militia, and sent him a proclamation ordering the rioters to disperse. But he also distinguished between ordinary people in the crowd and the leaders, who “gave a stab unseen” in their machinations than a “humble Person who openly confronts the Dangers to which he exposes himself.”⁵⁰

Fanning, doubly emboldened by Tryon’s public proclamation and private assurances of support, moved against the putative leaders of the Regulation, Husband and William Butler, leading a posse of nearly thirty men to arrest them. In doing so, he operated on the paternalist assumption that ordinary people were politically inert, easily deluded into self-destructive action by cabals of unscrupulous men with private motivations. Emphasizing the extraordinary nature of this event, Husband claimed that the group Fanning assembled included a “Tavern keeper or two, and a Man who had lately killed another,” criminals and other questionable figures sent to arrest an “innocent Person [i.e., Husband himself] without any Precept at all.”⁵¹ Husband remembered his arrest as follows:

On the second day of May, a little after Sunrise, ten or a dozen Men, armed with Guns and Pistols, entered the back Door of my House; and Thomas Hart, took hold of me, and said, You are the King’s prisoner. I asked, upon what Account. He said, on Suspicion of having a Hand in the Mob. They hurried me off, without letting my Wife fetch me some money; when I called for her for Some; In about two miles they come up to where Colonel Fanning was waiting for them...He said, Well, you’ll come along now...and [we] set off to Town, where William Butler and I were put into a Fort, mounted with two Swivel Guns, under a strong Guard; and after some Hours took me out before Thomas Loyd, who read a Paper of some Body being informed, there was cause of Suspicion, that I had a hand in the Mob.

⁵⁰ Tryon to Spencer, May 1768, *RD*, 101-02.

⁵¹ *IR*, 22; Husband, *A Continuation of the Impartial Relation* (1771), 19-20.

Fanning brought the two men into town as prisoners, bound to their horses by the hands and feet. Husband was among “nine or ten Prisoners, Most on account of the Regulation” held in a room so small that “we could not all lay down at once.” For him, the experience recalled “what I had read of Inquisitions, East-India Imprisonments, etc.” In the jail, Husband and Butler were confronted with the chilling spectacle of a “Gallows, erected between two Joyces [joists]...right over the middle of the Floor.”⁵²

If Fanning intended to destroy the Regulation by severing its head, arresting Husband and Butler had precisely the opposite effect. Indeed, this act inflamed the situation even more than the seizure of the mare, and hundreds of people—an armed crowd “actuated by what the World calls the Spirit of Enthusiasm,” as Husband put it, descended on Hillsborough. Tryon’s secretary intercepted the crowd in front of the courthouse, where he read a proclamation from the governor promising to “Protect and Redress them against any unlawful Extortions...or Oppressions” brought before him in formal petitions. The crowd, already pleased that Fanning had allowed Husband and Butler to post bail, dispersed, saying “That is all we want; Liberty to Make our grievances known.” But according to Husband, it quickly became clear that local leaders had no intention of allowing them to petition the colonial government directly. When the Regulators spread the news of the agreement throughout the countryside, and called a meeting to draft a petition, the officers realized that encouraging petitions was a “Mistake” that revealed the extent of Regulator anger at backcountry officials. Fanning

⁵² *IR*, 50.

moved swiftly to correct this error. Rumors spread that Fanning had ordered that no petition could be sent to the governor from Orange County “but such a one as they [court officials] had Wrote for us,” and that petitioning the governor directly would be represented by Fanning himself to Tryon as High Treason, and not Riot.”⁵³ The Orange County associators sent several petitions anyway and received Tryon’s response in June. He continued to promise that he would investigate allegations of malfeasance on the part of colonial officials but claimed that these grievances “by no means Warrant the extraordinary steps” that the Orange County crowd took in protesting them. These measures, he warned, “would inevitably if carried a little further...must have been treated as high treason,” and gave an unambiguous order:

[I]t is my direction...that you do from hence forward desist from any further meetings either by Verbal appointment or advertisement, that all Titles of Regulators or Associators desist among you, that the Sheriffs and other Officers of the Government are permitted without molestation to execute the duties of their respective Offices...⁵⁴

Historian Wayne Lee, emphasizing the promise to prosecute the practitioners of land fraud among colonial officials, has characterized this response as “measured and conciliatory” on Tryon’s part. Indeed, as Lee points out, the governor was well aware of the criminal activities of many of his officials. He was under orders from the Crown to both take a hard line with the rioters and keep the King “fully informed of the Causes of these Disturbances, to the End that if there appears to be any real Ground of Complaint,

⁵³ *IR*, 23-26.

⁵⁴ Council Minutes, *RD*, 125-26.

Measures may be taken to apply the proper remedy.”⁵⁵ But any petition not sent by independent associations would be filtered through the courts, which were controlled by the subjects of the protests themselves. Tryon’s response, Husband wrote, showed that “the Governor inclined to the other Side, multiplying our Faults to the highest Pitch he was capable of; and with as great an Extream Painting the other Side.” A subsequent letter from Tryon accused the Regulators of “Pursuing Measures highly Criminal and Illegal...bent...upon destroying the Peace of this Government...than a Wish or Intention to wait for any Legal Process against those you imagine have Abused their Publick Trusts.” They recognized that the governor had, in effect, outlawed the Regulator movement. Unsurprisingly, his proclamation against the crimes committed by officials not only “had no Effect at all,” but that “every Channel and Passage of Redress was stopped and shut up.”⁵⁶ In response to appeals from the Regulators, Tryon’s administration had in effect agreed to tolerate the criminal behavior of court officials while criminalizing steps taken to address them. Whatever he hoped to achieve with this approach, Regulator protests continued apace following this proclamation.

In July, Tryon himself arrived in Hillsborough intent, one historian has written, on “reasserting governmental authority in the Piedmont.” When the Orange County militia failed to turn out in sufficient numbers, he went deeper into the backcountry—to Charlotte and Salisbury—and through a combination of cajoling, “treating” with alcohol, and dispensing patronage, he assembled a force he deemed sufficient to meet the

⁵⁵ Lee, *Crowds and Soldiers*, 57; Hillsborough to Tryon, August 13, 1768, *RD* 154.

⁵⁶ *IR*, 30-31, 35.

Regulator threat when the Superior Court met at Hillsborough in the third week of September.⁵⁷ Rumors of Regulator marches on New Bern on the one hand, and plots by Tryon to summon Native Americans to attack the backcountry on the other brought affairs to a fever pitch by September 22, the date of their trials. Tryon, for his part, raised a militia army of just under 1,500 men, understandably expecting trouble at Hillsborough and, for that matter, at Salisbury. He had unsuccessfully ordered Regulator leaders to post a bond of £1000 guaranteeing that no effort would be made to rescue the two men. Thousands of Regulators, many under arms, descended on Hillsborough as well, but left the area after a brief standoff shortly before the court convened.⁵⁸

Thus in September of 1768, the attention of Orange County was focused on criminal proceedings, and the assumption among the people out of doors was that, as one Regulator sympathizer testified two years later, that it was a “Harmon Husbands would be...condemnd and put to Death.” The man remembered that Fanning himself had done little to allay these fears, frankly telling the man that Husband “must...Die as sure as thee is Born of Woman.”⁵⁹ But Fanning himself faced criminal proceedings in September, for extortion in taking excessive fees for registering several deeds. Several Regulators, including James Hunter, Ninion Hamilton, and Butler were accused of riot, and two other

⁵⁷ Kars, *Breaking Loose Together*, 156-157.

⁵⁸ *RD*, 159-60; Lee, *Crowds and Soldiers*, 61-63. The Regulator force departed under cover of night shortly before the trial. Negotiations between their leaders and Tryon and his council failed to reach a satisfactory conclusion.

⁵⁹ *RD*, 240.

men—Dennis Bradley and John Philip Hartso—stood trial for “burning the Granville [County] Goal.”⁶⁰

Husband himself had given considerable thought to the legality of resisting the impositions of Orange County officials. Ralph MacNair, a Scottish-born merchant who operated a store in Hillsborough, pointed out in a letter to Husband that the rioters may have imagined themselves acting according to law, i.e. as “Regulators,” when they opposed the “Publick Collectors.” Indeed, they proceeded from an understanding that “a man once exacted upon may with a safe conscience take any measures however unlawful for redress...[or]oppose the measures of Government till his scruples are removed...” But McNair argued that, under English law, the Regulators’ concepts of justice were “diametrically opposite to the law of nature.” Lecturing Husband on the punishments for such crimes as “writing, carrying about or dispersing a Libel,” and “Mobs and Riots,” he warned Husband that taking up arms to “alter the form of [government]” was high treason, the punishment for which was “to suffer the most horrid death allow’d by the English laws.” MacNair emphasized that the Regulators were close to crossing this legal threshold, and urged them to desist, promising that Fanning would not prosecute the rioters as “any otherwise than a Mob.”⁶¹

The court session began with the colony’s chief justice, Martin Howard, presiding. The court quashed each of the indictments for riot except those against Butler, Husband, and Hartso due to undisclosed irregularities in the indictments. Despite being

⁶⁰ Hillsborough Superior Court Minute Docket, September 1768, NCA; *IR*, 57.

⁶¹ McNair to Husband, May-June 1768, *CRNC*, 7: 767-770.

harassed by bayonet-wielding militiamen on the way to court and having each of the men he had hoped to use as witnesses turned away, Husband was acquitted of the charge that he had led the riot. William Butler, on the other hand, was convicted of riot, “rescue of goods,” and assault, and sentenced to six months in jail in addition to a £50 fine.⁶² Tryon, in an attempt to reduce tensions, issued a proclamation pardoning all of the “Insurgents...from the misguided multitudes” with the exception of Hunter, Husband, Ninion Hamilton, Peter Craven, Isaac Jackson, Matthew Hamilton, William Payne, Ninian Bell Hamilton, Malachi Fyke, William Moffitt, Christopher Nation, Solomon Gross, and John O’Neal. His pardon ordered “all officers of Justice” to “take notice” of these men.⁶³ Fanning was tried on multiple counts of extortion in his role as clerk, including unlawfully charging Adam Moses six shillings for registering a deed for a piece of land in Orange County.⁶⁴ The jury returned a guilty verdict on each count, but Fanning received a derisory fine—a single penny—for each conviction. The somewhat anticlimactic results of the standoff at Hillsborough were contradictory. On the one hand, the light sentences meted out to Fanning clearly indicated, and perhaps were meant to signal, that extortion and other criminal behavior was not taken seriously by the courts. On the other, Husband went free, and the court, contrary to the expectations of many in

⁶² HDSC Minute Docket, September 1768, NCA; *CRNC* 7:842-847; Troxler, *Farming Dissenters*, 75.

⁶³ Council Minutes, October 1, 1768, *RD*, 186.

⁶⁴ Indictment of the Hillsborough District Superior Court Against Edmund Fanning, March 22, 1769, *CRNC* 8:225.

the backcountry, had declined to take a hard line against the supposed leaders of the Orange County tumults.

“The Least Shadow of Justice”: 1768-1770

After this fraught court session, Tryon, probably hoping the matter would simply go away, pardoned the main body of the Regulators, a handful of enumerated leaders excepted, declaring their exploits thwarted by the “early & active rigour in exerting the powers of government.”⁶⁵ Throughout the backcountry, though, Regulators continued to press for reform, most visibly by bringing charges against allegedly corrupt officials, recapitulating the strategy that had landed Fanning in the Hillsborough court. One such official, John Frohock (one of the victims of the attackers in the so-called “Sugar Creek War” discussed in the previous chapter) was seen as a particularly blatant offender. Frohock, in many ways Fanning’s counterpart in Salisbury, was one of the wealthiest men in the backcountry and possessed considerable power within the colony’s complex webs of patronage and mutual interest. His landholdings included large tracts in the eastern part of the colony as well as in the Piedmont, and he was an assemblyman representing Salisbury (until 1769, when he was defeated by a Regulator candidate). In many ways, Frohock was a quintessential Regulator adversary, particularly in his role as clerk of court for Rowan County and the Salisbury District. Frohock was at the center of Regulator efforts to seek redress through the criminal justice system, as Rowan County

⁶⁵ Tryon’s Proclamation, September 9, 1769, *CRNC*, 8:67-68.

Regulators charged that much of his considerable wealth was ill-gotten, amassed by defrauding small farmers at every turn.

Attempts to bring Frohock and other public officials to justice within the criminal justice system confronted considerable obstacles. One group of Regulators, having agreed to bring charges against several officers at the September session of the Salisbury District Superior Court, observed that the grand jury seated that term was “composed of our most inveterate Enemies & of such as had been our greatest Oppressors.” Several members were former sheriffs and constables, to the point that “there [were] not above 2 or 3 on it, but what are limbs of the Law.”⁶⁶ In this hostile context, then, it was little surprise that attempts to prosecute court officials for malfeasance met with little success. Still, the group, led by Joshua Teague, a Rowan County planter, persuaded the colony’s deputy attorney general to bring the charges against Frohock, his brothers William and Thomas, and other court officials. Testimony before the grand jury in Frohock’s case reveals the overt nature of corruption the Regulators perceived in their public officials. One man testified that Frohock, as he prepared to bill a local widow for court costs, asked “what circumstances the Widow was in.” When the deponent answered that she “had money,” Frohock answered bluntly, “if that be the Case...then I must double the Bill.” Despite this and several other similar accounts, the grand jury failed to return any indictments, and none of Frohock’s inner circle in Salisbury faced charges for their crimes. Teague claimed that he had received notice to report for jury service, but had been denied the

⁶⁶ Letter from Joshua Teague, et al. to Herman Husband, September 14, 1769, *CRNC* 8:68.

opportunity to do so, and was replaced by a man presumably friendlier to the Frohocks. “Thus you see,” Teague wrote, “we can get no redress in what is called Courts of Justice...seeing our Crafty & cruel Oppressors, are so combined together, that we think it impossible to obtain the least shadow of Justice, among them...they take the power of the Court in their own hands, & try it themselves.”⁶⁷ Further attempts to bring charges against Hillsborough officials also met with failure. Regulators there charged that “troops” were stationed outside the court, and militiamen asked what business they had before the court. They claimed that “every one who dared to own [i.e., confess] that it was to complain of Officers, was ill-used by the Guards and Soldiery.” Those who “would not be scared away” almost always failed to bring charges against officials. In this atmosphere, justice was difficult to achieve for even prisoners not associated with the Regulators. They were “denied Attorneys...unless they would give Bonds for Fifty and to Three Hundred Pounds to each Attorney.” Here too, were juries weighted in favor of court officials: in one case against a local officer, the jury changed its verdict in favor of the defendant after mingling in the courtroom and “hearing others Sentiments.”⁶⁸ Clerks of court and other officials, a group of Rowan and Orange petitioners concluded in a 1769 petition, had “so fortified themselves against all the Laws now in force as to render themselves invulnerable to prosecutions...notwithstanding their many Enormitys.”⁶⁹

⁶⁷ Ibid, 69-70. Husband also published redacted portions of the letter in *IR*, 68-69.

⁶⁸ *IR*, 71. This letter is published without naming the author in *IR*. Husband read it and other petitions before the General Assembly in October, 1769. Lower House Minutes, *CRNC* 8:112.

⁶⁹ Petition from the Inhabitants of Rowan and Orange Counties, *CRNC* 8:82. The petition listed other Regulator demands, including the secret ballot, restrictions on plural office-holding, a more equitable tax system, ending the Anglican Church establishment, and measures to remedy abuses in the colony’s

The election of several Regulator-friendly assemblymen—including Husband himself—in 1769 created a flicker of hope that the blizzard of petitions from the backcountry that winter might lead to legislative action. But Tryon, incensed at complaints against British policies in a petition by the lower house, prorogued, or dissolved the Assembly in an effort to prevent it from calling a vote on a nonimportation agreement in response to the Townshend Acts.⁷⁰ The governor’s decision dashed Regulator hopes that their petitions might be acted upon—just a few of their key demands were even raised as legislation. Beyond passing a toothless resolution against public officers taking illegal fees, the Assembly took no substantive action.⁷¹

The Hillsborough Riot of 1770

The course of the Regulation pivoted on events transpiring in Hillsborough during the September 1770 session of the Superior Court. Again, the courts were the focus of their protests. As one historian puts it, “nothing had changed” for the Regulators despite persistent attempts to remain within the bounds of legitimate protest.⁷² As the court reconvened on Monday after a quiet opening Saturday, an angry crowd of Regulators assembled outside the courthouse. The scene was briefly recorded in the Court minutes:

land-grant process. For these reasons, Marjoleine Kars has written that this petition, along with another from Anson County, represent the most “wide-ranging, radical, and concrete vision of agrarian reform” from the pre-Revolutionary period. Kars, *Breaking Loose Together*, 171-173.

⁷⁰ Letter from Tryon to Lord Hillsborough, November 22, 1769, *CRNC*, 8:68-70.

⁷¹ Kars, *Breaking Loose Together*, 175.

⁷² Troxler, *Farming Dissenters*, 84.

Several persons stiling themselves Regulators assembled together in the Court Yard under the conduct of Harmon Husbands, James Hunter, Rednap Howell, William Butler, Samuel Devinney, & many others insulted some of the Gentlemen of the Bar, & in a violent manner went into the Court house, and forcibly carried out some of the attorneys, and in a cruel manner beat them. They then insisted that the Judge should proceed to the Tryal of their Leaders, who had been indicted at a former Court, and that the Jury should be taken out of their party.⁷³

Several other sources describe the ensuing events in more detail—a letter to Tryon from Superior Court justice Richard Henderson, who presided over the court on September 24, the day of the riots, depositions from Hillsborough merchant Ralph McNair and Josiah Lyon, and newspaper accounts that appeared first in the *Virginia Gazette* and then in Boston and New York. All were unsympathetic to the Regulation, and all generally agree on the scene that unfolded. Henderson, still no doubt shaken by the events, wrote Tryon that the Regulators, after taking over the court, promised that no harm would come to him if he agreed to hold court as planned, with no lawyers present. They insisted, Henderson wrote, that “they had come down to see justice done and justice they wd have.” But, he told Tryon that he “made no scruple at promising what was not in my intention to perform,” promising James Hunter—generally viewed at this point as the Regulator leader—that he would return the following day to hold court.⁷⁴ Once the immediate threat to his person had subsided, he prudently adjourned the court and “took the advantage of the night” to slip away to safety.⁷⁵ Several less fortunate court officials were “severely

⁷³ Hillsborough Superior Court Minutes, *CRNC* 8:235.

⁷⁴ Henderson to Tryon, *CRNC* 8:242.

⁷⁵ Deposition of Ralph McNair, *CRNC*, 8:245.

whipped.” One of Edmund Fanning’s eyes was nearly “beaten out,” and after forcing him to run from the town, they leveled his home, destroying his papers and other personal effects in the streets of Hillsborough. Henderson claimed that Fanning’s release came after a short but heated debate in which some Regulators argued for executing him. After humiliating their nemesis, McNair reported that they continued “patrolling the streets to the terror of the Inhabitants,” and that they “assaulted” his house by shattering windows. Before retiring, the Regulators “almost totally demolished” Fanning’s house, drinking his liquor and smashing his furniture in the streets of Hillsborough.⁷⁶

According to some accounts of the incident, after seizing control of the courthouse, several members of the crowd held a mock court session. The newspaper account that first appeared in the *Virginia Gazette* on October 25, 1770 luridly claimed that the mob, in order to “show their opinion of courts of justice,” unchained the decomposed corpse of a “negro that had been executed sometime, and placed him at the lawyers bar.” Meanwhile they “filled the Judge’s seat with human excrement,” a visceral representation of their contempt for the court.⁷⁷ Whatever the veracity of this account of the incident, the margins of the court docket from September speak to the spirit of their protests. Unknown Regulators, having taken over the court, left mocking comments and sentences on a series of civil cases featuring prominent local men. In two typical entries, John Williams, an Orange County attorney (who had been the first man beaten by the Regulators outside the courthouse) suing Robert Mitchell, was mockingly ordered to

⁷⁶ Henderson to Tryon, *CRNC*, 8:242-244.

⁷⁷ *Virginia Gazette*, October 25, 1770.

“Pay costs and be put in the stocks,” and Isaiah Hogan, suing Herman Husband, was ordered to pay and “be damned.” Thomas Richardson, plaintiff in a suit, was ordered to have “his body scourged for Blasphemy.” They dismissed many of the officials, lawyers, and merchant houses that were parties to a series of suits recorded in the docket as “damned rogues.”⁷⁸

This episode, while extreme in its violence, was reminiscent of other contemporary incidents in the Piedmont. Anson County sheriff William Pickett, for example, testified that men in his county had “pulled [judges] off the bench, took their seats, Continued Dancing, &c., for some time.” Pickett believed their intent was “to prevent the usual Course of Justice” in Anson County.⁷⁹ One man swore that he heard a group of Regulators in Hillsborough, after “committing the most unheard of Acts of Violence and Riot, Drink Damnation to King George...and Success to the Pretender.”⁸⁰ As a number of historians have observed, these charges carried considerable weight--endorsing the Stuart claim, via toast or otherwise, to the throne of England was treasonous, if not high treason itself. In an effort to underscore the criminality of the Regulators’ actions, Tryon emphasized this account in a proclamation issued on October 18, just under a month after the incident.⁸¹ The version of the incident in the *Virginia*

⁷⁸ Hillsborough Superior Court Minutes, Sept. 24, 1770, *CRNC*, 8:236-239.

⁷⁹ “Testimony of William Pickett and James Terry concerning the actions of the Regulators,” December 7, 1770, in *SRNC* 22: 411.

⁸⁰ Deposition of Josiah Lyon, September 30, 1770, *RD*, 250.

⁸¹ Lee, *Crowds and Soldiers*, 69; Tryon’s Proclamation, October 18, 1770, *RD*, 266.

Gazette is similarly laden with eighteenth-century criminal tropes and serious accusations calculated for effect. This account referred to the rioters at Hillsborough as “headed by men of considerable property,” and claimed—*contra* the account rendered by Henderson himself, that they had threatened to kill the judge. They emphasized the brutal nature of the attacks on Fanning and other court officials, and asked rhetorically, “Would a Hottentot have been guilty of such a piece of brutality!” The Regulators, the writer concluded, were “no other than a desperate and cruel banditti, actuated by principles that no laws can restrain, no honour or conscience bind.”⁸²

1770-71: “Anarchy and Confusion”

The incident in the Hillsborough court clearly frightened officials throughout the colony. But it also presented Tryon with an opportunity to crush the Regulators for good. While the governor issued a proclamation ordering that the Hillsborough rioters be brought to justice, he consulted the colony’s attorney general Thomas McGuire for his opinion on the extent to which they could be punished. McGuire characterized the destruction of Fanning’s house, and the abuse of Fanning and other courthouse officials, as riot, not treason. He thought the accusation that the Regulators had drunk to the success of the Pretender to be “inconclusive.” But above all, he warned the governor that attempts to hold court in either Hillsborough would almost certainly be thwarted by the

⁸² *Virginia Gazette*, October 25, 1770. In the eighteenth century, “Hottentots,” a name given by Europeans to perceived groups of peoples in Southern Africa, were portrayed in English literature as less than human, unthinking “brutes” beyond the pale of civilization. According to one scholar, they were portrayed in a more negative light than any other indigenous people encountered by English explorers. To use this word to refer to the Regulators, then, was to place them beyond even the traitor or the Jacobite. Linda Evi Merians, *Envisioning the Worst: Representations of “Hottentots” in Early Modern England* (Newark: University of Delaware Press, 2001) 188-189.

Regulators, especially if one of their number was on trial. “If apprehended,” he wrote the governor, “[Regulators] must under the present Court Law be tried in the District where the offense was committed.” As the Attorney General observed drily, “when the Recent Instances of their Conduct are consider’d, [they]leave Room to apprehend the Inefficacy that may be derived from that Source.”⁸³ An Orange County Regulator petition to Chief Justice Martin Howard one day after McGwire wrote his opinion illustrates the intractability of the dispute over justice in the Piedmont: Juries in the Piedmont were “made up...mostly of Men well known to be prejudiced in favor of extortionate Officers and of such Officers themselves.” It would have been impossible for them to have read McGuire’s memorandum, but they disputed its main concern directly, claiming that, if the court was willing, impartial juries would be no harder to find than “if a Gang of Horse Thieves had been numerous and formidable enough to have engaged the same Attention and Concern of the Publick.” In a statement that encapsulates the Regulators’ views on the unfair administration of criminal justice in the region, they went on to argue that “these Extortioners and Exactors of Taxes are certainly more dangerous than those Thieves, and in the next place they and all who espouse their Cause knowingly are as to Numbers inconsiderably small only that they have the handling the Law chiefly in their own hands.” The consequence, they argued, of allowing these men to prey on the inhabitants of the Piedmont was “wooden Shoes and uncombed Hair,” markers of poverty in the early modern world. In order to further promote their legal legitimacy, a

⁸³ Thomas McGuire to Tryon, *CRNC*, 266-277.

group of Regulator leaders publicly announced they would not impede colonial officials in apprehending men accused of stealing money from Fanning's house during the riots at Hillsborough.⁸⁴ But both sides in the conflict, and no doubt the majority of the colony not immediately involved, had lost confidence in the ability of the criminal justice system to function in the Piedmont.

In late 1770, the lower house of the Assembly seemed to be of two minds on the issue of how to address events in the backcountry. On the one hand, several Regulator sympathizers had been elected—including Herman Husband himself, chosen from Orange County in a stinging defeat for Fanning. One unsympathetic observer claimed that “a majority of the House are of regulating principles.”⁸⁵ But the legislature enacted no transformative laws, only observing to Tryon that the “Conduct of Public Officers...has given just cause of Complaint.” They attributed most of the supposed criminal behavior of officials to an “inconsistent and Oppressive Fee Bill, and passed laws intended to clarify the process. The confusing fee structure was, in fact, the justification for the nominal fines paid by Fanning. Among other measures, they also established several counties in the heart of Regulator country—Wake, Guilford, and Chatham from Orange County, and Surry from Rowan. This tepid response was accompanied by the highly provocative step of voting to expel Husband from the Assembly for allegedly publishing a libelous letter to Superior Court Judge Maurice

⁸⁴ *RD*, 268-271; Regulator Advertisement, November 20, 1770, *CRNC*, 8:260.

⁸⁵ James Iredell to John Harvey, in Don Higginbotham, ed., *The Papers of James Iredell* (Raleigh: Division of Archives and History), 1:57.

Moore in the *North Carolina Gazette*, and for boasting that crowds of Regulators would break up the Assembly if they actually went through with this step. Tryon then went one step further, ordering the Orange County firebrand imprisoned⁸⁶

In this febrile atmosphere, the assembly enacted the Johnston Riot Act. The Act represented the most significant way in which the North Carolina Assembly sought to redefine justice in the midst of the Regulator revolt. The Act, explicitly aimed at the Regulators, criminalized riots as a form of legitimate political expression by providing for “Death as in Case of Felony” for those convicted of joining in “riotous and tumultuous Assembly” in groups of ten or more. Similarly, the Act punished attacks on property, especially the “Court House or Prison,” with death without benefit of clergy. Those accused of riot who failed to turn themselves in for trial became outlaws, for the act made it “lawful...for any Person...to kill and destroy such Offender” without fear of prosecution.⁸⁷

The Johnston Act thus removed a time-honored distinction between riot, which possessed a measure of legitimacy in the English political tradition, and insurrection. Given the political realities current in North Carolina, it was directly aimed at the people

⁸⁶ The Assembly also included Edmund Fanning, elected as representative of Hillsborough. Well into the antebellum period, North Carolina assemblymen were elected from counties as well as towns, a custom that mimicked the dual representation system (boroughs and counties) in Parliament. In a move that was surely calculated to check Regulator influence in the legislature, Tryon had ordered Hillsborough incorporated as a town—despite the fact that it was too small to be so designated—to ensure that Fanning would be returned to the Assembly despite losing to Husband in the county election. Kars, *Breaking Loose Together*, 186-190. Assembly Address to Tryon, December 1770, *RD*, 283; Assembly Resolution, December 20, 1770, *RD*, 295-296.

⁸⁷ Acts of the North Carolina General Assembly, in Clark, ed., *State Records of North Carolina* (Goldsboro: 1906), 25:519a-519f.

of the Piedmont. As one eastern lawyer and politician explained the mindset of the colony's lawmakers in 1771, "desperate diseases must have desperate remedies."⁸⁸ As Wayne Lee has shown, it ensured that the government held a "preponderance of...legitimacy to use force," a condition that was not taken for granted in the eighteenth-century English world, where riot, carried out within certain boundaries, was considered a quasi-legal form of political expression.⁸⁹ Upon reviewing the law, the Crown worried that the provision of the Act that empowered anyone to "kill and destroy" an accused man who had not surrendered within sixty days of his indictment under the law was "irreconcilable with the principles of the constitution, full of danger in its operation and unfit for any part of the British Empire." In short, the act put the "Execution of the Law into the hands of the Subject," thus "depriving withal the Crown of its prerogative of extending Mercy to offenders." But because of the supposed efficacy of the law in repressing the "seditious spirit" still prevailing in North Carolina, the instructions for Martin mandated only that he take care in its enforcement.⁹⁰

North Carolina's response to the Regulation became a sort of model for other legislatures after the Revolution. In Vermont, for example, the state legislature proscribed backcountry rebels through a Riot Act of March 8, 1787 that allowed suspected rebels to

⁸⁸ Iredell to Harvey, *Iredell Papers*, 57.

⁸⁹ Lee, *Crowds and Soldiers*, 73.

⁹⁰ "Instructions to Josiah Martin Concerning Riots," *CRNC* 8:516; Order of the King in Council, April 22, 1772, Colonial Office 5/302, 96-97, British Records, NCA. In short, the stated objections of the Crown's attorneys were based on the threat the bill posed to the prerogative of the Crown, not because it traduced the rights of British subjects.

be shot on sight by sheriffs or even held as servants by citizens who apprehended them. Similar laws were passed in New Hampshire, Massachusetts and Connecticut.⁹¹ In North Carolina, these laws did not have the intended effect, rather exacerbating the anger of the backcountry farmers already inflamed by a series of injustices. As one observer wrote in the wake of the Regulators' defeat at Alamance Creek, the Johnston Riot Act "converted riots into treasons," agitating the disaffected backcountry crowds more than ever before.⁹² The popular rage the Johnston Act elicited in the Piedmont was expressed in a speech allegedly given by Thomas Hamilton, a Regulator leader, at a "regulating Camp" in 1771:

...The Assembly have gone and made a Riotous Act, and the people are more enraged than ever, it was the best thing that could be for the Country for now we shall be forced to kill all the Clerks and Lawyers, and we will kill them, and I'll be damned if they are not put to death...If they had not made that Act we might have suffered some of them to live. A Riotous Act! There never was any such Act in the Laws of England or any other Country but France, they brought it from France, and they'll bring the Inquisition next!⁹³

The Riot Act, in other words, was seen as contrary to the English constitution, a violation of the rights that protected British subjects from arbitrary impositions of the state. As the excerpt suggests, Regulators held out little hope for a peaceful resolution to the conflict—all the powers of the state were arrayed against them.

⁹¹ Szatmary, *Shays' Rebellion*, 78-83.

⁹² Letter from "Atticus" to William Tryon, *Virginia Gazette*, November 7, 1771.

⁹³ Deposition of Waightstill Avery, CO 5/302, British Records, NCA, 61.

1771: Alamance and its Aftermath

By the spring of 1771, Tryon had resolved to crush the Regulator movement once and for all. He secured indictments for riot against over forty Regulator leaders in a special court of oyer and terminer convened in New Bern, far from the heart of Regulator country. The indictment characterized the actions of the Regulators as “execrable...plain usurpations of the Power of the Legislature, substituting in its place armed and lawless Force.” If not apprehended, the grand jury warned, the “wicked, seditious, evil, designing and disaffected Persons” that made up the body of the Regulators would subject the colony to “Anarchy and Confusion.”⁹⁴ With the Regulation doubly proscribed—by the indictments of their acknowledged leaders and by the Johnston Act, Tryon assembled two militia forces, one under his command made up of men from eastern counties and another, much smaller body led by Hugh Waddell. Tryon, a career army officer, led his force west to Hillsborough and further into the backcountry aiming to cow the Regulators into submission. After marching from Salisbury, Waddell was stopped without bloodshed by a much larger force of Regulators without ever making it out of Rowan County. The Regulators, having assembled under arms themselves, met Tryon’s force in a field along Alamance Creek, then in Orange County. After talks between Tryon and intermediaries failed, the two sides clashed in a two-hour, European-style battle, and the Regulators were driven from the field by Tryon’s more disciplined force.⁹⁵

⁹⁴ Minutes of the New Bern District Court of Oyer and Terminer, March 11-16, 1771, *CRNC* 8: 531.

⁹⁵ This account of the Battle of Alamance is largely drawn from Lee, *Crowds and Soldiers*, 76-87.

In the immediate aftermath of the battle, Tryon (having already shot a prisoner before the battle commenced) summarily hanged one man, a young Hillsborough carpenter named James Few. He pointed out that the execution was authorized under the Riot Act and claimed in a letter to his superiors in London that he had ordered it to mollify his troops, who wished to chase down and massacre the fleeing Regulator force. However, one eyewitness remembered much later that Fanning had instigated the hanging, as Few had joined the Regulation out of a personal animus: he was “engaged to be married to a young woman whom Fanning debauched.”⁹⁶ One historian has recently observed that if Fanning’s encounter with the young woman was nonconsensual, the incident demonstrates that Fanning was “beyond the law.”⁹⁷ But this is true whatever the circumstances of Fanning’s encounter with the young woman—in the eyes of the Regulators, Fanning, and for that matter, Tryon—had used his position of power to visit summary punishment on the unfortunate young man. In the wake of the battle, Tryon devastated the farms of suspected and confirmed Regulators, burning farms, confiscating firearms, and taking foodstuffs from Orange County families in particular. This act was widely condemned by even some of his erstwhile supporters. Encouraged by the governor’s council to “leave a door open for mercy,” he offered pardons to Regulators who would surrender their arms, swear to pay taxes, and take an oath of allegiance to the Crown. Tryon claimed that over three thousand men accepted these terms, but court records reveal that some men refused to take the oath. Robert Wood, for example, was

⁹⁶ *RD*, 570; Kars, *Breaking Loose Together*, 206-7.

⁹⁷ Troxler, *Farming Dissenters*, 113.

committed to jail for having “Obstanatly Refused” to accept the oath after a Rowan magistrate read it to him in late 1771.⁹⁸ Militia units rounded up many suspected Regulators, whipping and beating them on the spot. After marching to Moravian country, where he was warmly received by the Brethren, Tryon offered a reward of one hundred pounds and one thousand acres of land for the capture of Husband, Hunter, Rednap Howell, and Butler.⁹⁹ These men went into hiding, but the militia force confiscated their farms and destroyed their crops. Husband’s lands, according to one account, were left “without a Spear of Corn, Grass, or Herbage growing, and without a House or Fence standing.”¹⁰⁰

One month after Alamance, Tryon’s swift and brutal retribution fittingly came to an end after a special criminal court session held at Hillsborough. Fourteen Regulators captured either at Alamance or in the immediate aftermath of the battle went through a quick trial clearly aimed at securing guilty verdicts against the men. Two, however, were acquitted, but the other twelve who stood trial that day were convicted and sentenced to death. On June 19, six of the twelve condemned men went to the gallows, specially constructed for the occasion on a hill overlooking the town of Hillsborough. A crowd that included the wives and children of James Pugh, Robert Messer, Benjamin Merrill, and Robert Matear witnessed the deaths of these men, and two others whose names remain unknown. As Pugh climbed atop a barrel on the scaffold and the hangman placed a noose

⁹⁸ Rowan County Court of Pleas and Quarter Sessions, Minute Docket, 1753-1772.

⁹⁹ Tryon, Proclamation of June 9, 1771, *RD*, 473-474.

¹⁰⁰ Virginia Gazette, July 4, 1771, in *RD*, 489-490.

around his, he addressed the crowd, repeating the Regulators' familiar complaints against corruption one last time. When he specifically condemned Edmund Fanning's actions in public office, Fanning, according to some accounts, kicked the barrel from under his feet, hanging him immediately. Thomas Donaldson, the executioner, received £5 a prisoner for his work.¹⁰¹

Less than two weeks after the executions at Hillsborough, Tryon left the colony to assume the post of governor for New York. Fanning accompanied him, the two men, one recent historian remarked, leaving the colony in a "column of smoke."¹⁰² By that point, James Iredell, a young lawyer recently arrived from England remarked, "Regulation is a name scarcely remembered, and all busy spirits are at peace."¹⁰³ As one historian has observed, Tryon's hard-line stance with the Regulators "made him a popular figure in the Assembly" even as the imperial crisis worsened, but whatever good will he forged with the colony's elites did not last. His successor, Josiah Martin, like most contemporary royal governors, struggled to contain the forces of revolution that eventually tore the colony apart.¹⁰⁴ Martin's struggles with colonial leaders stemmed in part by his efforts to address Regulator grievances by restricting the powers of local officials and reining in corruption. While he initially regarded the Regulators as "rebel traitors," he returned from a 1772 tour of the Piedmont, "that region of malcontents," as he called it, with genuine

¹⁰¹ "Invoice from Thomas Donaldson for execution of Regulators," *SRNC* 22:465.

¹⁰² Troxler, *Farming Dissenters*, 117-118.

¹⁰³ Iredell to Arthur Iredell, July 31, 1771, *RD*, 492.

¹⁰⁴ Spindel, *Crime and Society in North Carolina*, 14.

sympathy for their cause.¹⁰⁵ Indeed, his account of the causes of the Regulation in a letter to Lord Hillsborough, British Secretary of State for the Colonies, reads like a Regulator advertisement:

My progress through this Country My Lord hath opened my eyes exceedingly with respect to the commotions and discontents that have lately prevailed in it. I now see most clearly that they have been provoked by insolence and cruel advantages taken of the peoples ignorance by mercenary tricking Attornies, Clerks, and other little Officers who have practiced upon them every sort of rapine and extortion by which having brought upon themselves their just resentment they engaged Government in their defence by artful misrepresentations that the vengeance the wretched people in folly and madness aimed at their heads was directed against the constitution and by this stratagem they threw an odium upon the injured people that by degrees begat a prejudice which precluded a full discovery of their grievances ...[T]he resentment of Government was craftily worked up against the oppressed and the protection which the oppressors treacherously acquired where the injured and ignorant people expected to find it drove them to acts of desperation and confederated them in violences which as your Lordship knows induced bloodshed and I verily believe necessarily.¹⁰⁶

In short, Tryon's successor argued that the Regulators, having failed to find "protection" where they "expected to find it," i.e. in the courts, "necessarily" led to "violences." On the one hand, Martin wrote as the political landscape of the colony was beginning to shift, and he perceived likely allies in the old adversaries of the colony's elites. On the other, with the consequences of the movement far from settled—many of the Regulator leaders were still at large—the colony's new governor found it difficult not to sympathize

¹⁰⁵ Josiah Martin to Hillsborough, March 8, 1772, *CRNC* 9:268-269.

¹⁰⁶ Martin to Hillsborough, August 30, 1772, *CRNC* 9:332.

with men his predecessor had made war against. Thus the boundaries of justice in the Piedmont remained unsettled entering the Revolution.

Conclusion

Historian Laura F. Edwards has argued that, after the Revolution, a conflict emerged between educated legal reformers in the South—men including future Supreme Court justice James Iredell—who saw law “in scientific terms,” as an “internally consistent set of universally applicable principles” and “legal localism” that predated the Revolution. This legal culture emphasized what Edwards calls the “peace,” a quasi-legal concept that entailed a sort of melange of local power realities and notions of justice.¹⁰⁷ As the Regulator movement makes clear, this dichotomy predated the Revolution. Whatever their localist sensibilities, the Regulators were also intensely legalistic. They sought out legal opinions from experts, passed around law books inside courtrooms and cited decades-old Assembly statutes in their formal protests. In this way, as much as economically, the Piedmont was becoming increasingly integrated with the broader Atlantic World in the decade of the 1760s. But just as these developments exposed farmers to the potentially ruinous permutations of the market, and often left them facing insurmountable debts, exposure to the criminal justice system in the colony underscored the stark inequalities they faced. If, as James Whittenburg wrote four decades ago, the Regulator movement grew out of frustrated social aspirations of backcountry planters, it gained momentum and intensity as men and women throughout the region learned that

¹⁰⁷ Laura F. Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 30-31.

the men who embezzled and extorted their money could do so with impunity in a criminal justice system they controlled.

Regulator associations were conscious that men like Fanning were attempting to legally proscribe what they understood as a legal “regulation” of extralegal behavior: “Think not,” they warned officials in an advertisement in March of 1768, to “frighten us (with Rebellion) in this Case, for if the Inhabitants of this Province have not as good a Right to Enquire into the Nature of our Constitution...we think that it is by arbitrary Proceedings that we are debarred of that Right.”¹⁰⁸ Of course, Fanning and other Regulator adversaries had the ear of the governor and control of the courts, and from the earliest stirrings of the movement, these influential men perceived it as a serious threat to their power. They therefore framed it as a violent, even treasonous insurrection by licentious, unscrupulous men. Their rhetoric evoked familiar colonial tropes of “savages,” “banditti,” and Jacobites. But in reality, certain backcountry leaders—even important Regulator figures such as James Hunter, Herman Husband, and William Butler—attempted to channel protests through legally-acceptable channels, or at least to encourage backcountry farmers to avoid direct conflict. Husband, like many others in the movement, had a special interest in avoiding direct conflict. He was a pacifist, though he had few scruples about violating laws he viewed as unjust. Other Regulators placed a greater emphasis on legality and legitimacy. In 1770, for example, Butler became a deputy sheriff in Orange County.¹⁰⁹

¹⁰⁸ Regulator Advertisement No. 5, March 22, 1768, *RD*, 79.

¹⁰⁹ Kars, *Breaking Loose Together*, 180.

As Marjoleine Kars has observed, the problem the Regulators posed Tryon and his allies in North Carolina government was not simply a parochial political contest--it had much broader imperial implications. Tryon was a quintessential British imperialist, an ambitious man who coveted a more lucrative post. Already well-connected in London, he could cement his status as an up-and-comer in the British Empire by quelling the rebellion.¹¹⁰ Moreover, as seen above, the issues that sparked the Regulation existed in other colonies, and many royal governors feared the contagion of backcountry unrest might spread to their jurisdictions.¹¹¹ Unlike his predecessor Arthur Dobbs, who was accused--with some justification--of winking at rioters in the past, Tryon thus had every motive to deal with the Regulators in the quickest way possible. The fact that the Regulation emerged in the midst of unrest surrounding British policies was significant—it incentivized Tryon to prioritize the prosecution of Regulator leaders like Husband over attempts to address their grievances.

Though shifting economic, demographic and social forces in the Piedmont contributed to the social strife that roiled the colony and turned courtrooms into scenes of

¹¹⁰ Tryon had, in fact, been disappointed in his application for the governor's position in New York by governor John Murray, Earl of Dunmore. Dunmore, even more a creature of empire than Tryon, quickly ran afoul of the political factions that characterized British politics, and was transferred to Virginia, where he would play a major role in the outbreak of the American Revolution through his famous proclamation. His replacement in New York was William Tryon. Contrary to the claim by a recent biographer of Dunmore that Tryon received his position because he "impressed the king...by suppressing the Regulator movement," the North Carolina governor received his promotion before the battle at Alamance Creek, in February of 1771. At that point, the colony was very much in turmoil, and the Regulators far from suppressed. James Corbett David, *Dunmore's New World: The Extraordinary Life of a Royal Governor in Revolutionary America—with Jacobites, Counterfeiters, Land Schemes, Shipwrecks, Scalping, Indian Politics, Runaway Slaves, and Two Illegal Royal Weddings* (Charlottesville: University of Virginia Press, 2013), 25-41; Hillsborough to William Tryon, February 11, 1771, *RD*, 345.

¹¹¹ Kars, *Breaking Loose Together*, 187.

riot and disorder, the conflict at Alamance was not inevitable. At various points, leading officials deliberately escalated the conflict by criminalizing the movement. Though aware of rampant corruption in the backcountry and enjoined by his handlers in London to snuff it out, Tryon never devoted much energy to doing so. The Regulator movement was thus in no small part the consequence of inequalities in the administration of criminal justice—and justice more generally in the colony. The tensions that led to the movement were not resolved through the institutions normally tasked with keeping order, and, as the following chapter will show, the Revolution descended on a region and a colony still reverberating with the aftershocks of the rising. Contemporaries understood the implications of this debate over justice and the criminalization of those who protested government corruption. In the reflection on the Regulation that led his article to be burned on the New Bern scaffold, Leonidas asked a question fraught with meanings that he could not have anticipated. “What,” he asked rhetorically, “shall we in future think of the term Loyalist should it be any time to be exclusively applied to extortioners, traitors, robbers, and murderers?”¹¹²

¹¹² *Massachusetts Spy* No. 17, June 27, 1771, 67.

CHAPTER IV

“WICKED CONTRIVERS AND PROMOTERS OF VIOLENCE”: JUSTICE, ORDER, AND THE REVOLUTION IN NORTH CAROLINA

On September 11, 1776, John Ross Dunn, a Rowan County official and founder of the town of Salisbury, petitioned Samuel Ashe, the newly-elected governor of North Carolina. Writing from a cell in the Charles Town, South Carolina jail, Dunn recounted a harrowing story. On July 31, 1775, he wrote, a group of “armed Persons” took him from his home, detaining him “under a specious pretext that some Gentlemen from South Carolina were Desirous of seeing him.” From Salisbury, Dunn was escorted by an armed body of men to Mecklenburg County, where he was questioned by the local Committee of Safety. Dunn and Benjamin Booth Boote, a Salisbury attorney arrested at the same time under similar circumstances, were sent under guard “without a shift of any kind of apparel nor a shilling in our pockets” to jail in Charles Town, where they still languished more than a year later. As Dunn explained in a document accompanying his petition, his alleged crime was signing a brief “declaration of allegiance, fidelity and obedience to his Majesty and submission to the British acts of Parliament in general” disseminated by Boote in August of 1774. In what Dunn charged was a conspiracy involving several of his political rivals, a local man made a “fair copy” of the declaration and forwarded it to Mecklenburg County, where Waightstill Avery, a prominent Whig lawyer, read it aloud before the county’s revolutionary Committee of Safety. As Dunn pointed out in his petition to the governor, his arrest and imprisonment took place without any

“examination, tryal or Convention or any legal or just charge. Eventually, both Dunn and Boote were freed, and allowed to return to Salisbury, Dunn having posted a £1000 for his continued loyalty to the Revolution. He was appointed attorney for the Salisbury District, and returned to prominence in the community.

But Dunn’s experience—armed men entering his home, self-styled radicals demanding his unquestioned loyalty to the Revolutionary cause, denunciation by an unsympathetic local political rival, and the disruption of imprisonment—were common, even typical, for many people during the early years of the Revolution in the Piedmont. In this region, where popular enthusiasm for the Revolution perhaps ran lower than in any other in the colonies, revolutionary leaders often took extraordinary steps to secure the loyalty of wavering people. Yet even the ordinary measures they took amounted to a level of state involvement not previously experienced except by those who had borne the brunt of Tryon’s response to the Regulator movement. For many in the region, the Revolution arrived not as a crowd action of a public reading of a declaration, but in the form of a late-night knock on the door, followed by an examination of one’s “political sentiments with regard to American Liberty,” as Dunn put it.¹

From the perspective of criminal justice, the Revolution created new classes of outlaws to be rounded up and either forced to acquiesce to the authority of the revolutionary state or be expelled from North Carolina society altogether. Initially, these measures were carried out by a new revolutionary bureaucracy, employing the familiar

¹ Petition from John Ross Dunn, *CRNC* 19:797-98; Memorandum from Dunn, *ibid*, 898-903. Carole Watterson Troxler, “John Ross Dunn,” in *DNCB* 2:120-22; Dunn Memorandum, *CRNC* 19:901.

institution of the militia for less familiar purposes. As the imperial crisis deteriorated in late 1774, revolutionary leaders established committees of safety at county, town, and colony (eventually state) level. These organizations became the instruments of a nascent revolutionary state even before independence. After independence and the establishment of a new state government, the role of enforcing the Revolution fell to the county and district courts, established by the new legislature. The courts continued the work of the committees in attempting to enforce an elusive consensus for revolution.

For North Carolina's leaders, the Revolution offered a paradox, familiar to a people who had just experienced the turmoil of the Regulator movement. On the one hand the revolutionary state was charged with maintaining order, a *sine qua non* for any legitimate government. On the other, the state, governing as it did during wartime, had to destroy, marginalize, or convert its enemies. This played out against the backdrop of a population whose commitment to the whig cause was fickle at best.² To establish and maintain legitimacy, whigs had to maintain public order, bearing in mind that many people in the region outright rejected the Revolution and the new government it created. But maintaining public order meant that the state would play an unprecedented role in the lives of people in the Piedmont. The enforcement of criminal law was thus a central concern of the revolutionary state, but overexertions of state authority in enforcing the law would cause an already disaffected population to turn to the Loyalist cause.

² I use the terms "Whig" and "Loyalist" to refer to supporters of the Revolutionary cause on the one hand, and supporters of the British on the other. Other epithets, including "Liberty men" for the revolutionaries, and "Tories" for the opponents of the Revolution, are used when quoted.

Crime and Revolution in North Carolina

Crime, or at least criminal discourse, was ever-present in the escalating protests during the Revolutionary era. British North Americans, including North Carolinians, frequently—indeed, almost invariably—protested alleged British abuses within what one historian has called a “vernacular legal culture” featuring “criminal narratives and mock executions” that underscored the criminality and illegitimacy of British actions.³ Courthouses frequently served as theaters for public protests, as they did during the Regulator movement, and crowds ritually hanged and burned effigies of public officials, often after a pantomime “trial.” The “trial” and “execution” of offensive publications in New Bern referenced in the preceding chapter demonstrates that communities—or at least their leaders—sometimes employed the same techniques on ideas deemed outside of community standards as well. North Carolina Whigs gave the same treatment to proclamations by royal governor Josiah Martin denouncing the Revolution. On a more practical level, during the spiraling crisis of the mid-1770s, criminal courts became a major source of contention between the colony’s elites and Martin, who unilaterally established special criminal courts of oyer and terminer in 1773 after the Privy Council in London disallowed a General Assembly bill establishing a court system. This action, while a response to a genuine need in the colony, struck many in the Assembly as arbitrary and illegal.⁴

³ Steven Wilf, *Law’s Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (New York: Cambridge University Press, 2014), 10.

⁴ The Papers of James Iredell, ed. Don Higginbotham (Raleigh: North Carolina Division of Archives and History 1976), 1:lx.

Whigs and Loyalists alike thus asserted that the actions they undertook had legal sanction, which was, they agreed, crucial to revolutionary (or counter-revolutionary) legitimacy. Indeed, the earliest colonial protests against British policy asserted that the English had broken the law. Colonial writers, in an effort to underscore the legitimacy of their grievances, stressed the illegality of British actions in revolutionary pamphlets. For example, the “Declaration of Causes and Necessity of Taking up Arms” issued by the Continental Congress in the summer of 1775 featured the claim that British troops had “murdered” the “inhabitants”—not, crucially, “militia”—of Lexington as part of an “assault” on that town.⁵ Revolutionaries in North Carolina accused Josiah Martin of a host of crimes, including—repeatedly—the provocative allegation that the royal governor turned to “the incitement of Indians to murder...and the more than diabolical purpose of exciting our own Domestics...to cut our throats.”⁶ American revolutionaries levied the same charge “to a candid world” in the original draft of the Declaration of Independence, which culminated a list of crimes alleged against King George by arguing that British efforts to recruit enslaved people to the royal banner amounted to “paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.”⁷ For their part, royal officials and Loyalists

⁵ Wayne E. Lee, *Crowds and Soldiers*, 140-141; “Declaration of the Causes and Necessity of Taking Up Arms,” at avalon.yale.edu/18th_century/arms.asp (accessed January 22, 2017).

⁶ Quoted in Lee, *Crowds and Soldiers*, 142.

⁷ *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton: Princeton University Press, 1950), 1:426. This accusation was excised from the final draft of the Declaration because its condemnation of the slave trade was offensive to South Carolina and Georgia delegates. But the accusation that the king had “excited domestic insurrections among us,” in addition to encouraging “merciless Indian savages” to make war on the frontiers remained. Robert G. Parkinson has recently argued that this accusation, which came at the end of a long list of terrible crimes, was the “ultimate deal breaker” for the colonists, and the

themselves characterized the early stages of the Rebellion as instigated by criminals, “wicked contrivers and promoters of...violences” who flagrantly engaged in treason against the Crown.⁸

The question of revolutionary legitimacy was especially urgent in the North Carolina backcountry. Revolutionary fervor was not unknown in the Piedmont, but the revolutionary conflict, and the fresh turmoil it unleashed so soon after the end of the Regulation, was an unwelcome intrusion. For many people, especially in Orange and Rowan counties, it must have marked simply another episode in a continued period of upheaval. Perceptive observers saw other continuities with the Regulation. One historian has pointed out that the Revolution marked a crisis in which the colony’s political elite, “paid the price for the failure to build a respectable tradition of political leadership.”⁹ Almost fifty years of scholarship has chipped away at the assumption, once held by “consensus” historians, that gentlemen led compliant ordinary people into revolution. Even in Virginia, where planter hegemony was once taken for granted by historians, ordinary people, particularly in the backcountry, shaped the course of the Revolution.¹⁰

basis of the “common cause” against Great Britain. Parkinson, *The Common Cause: Making Race and Nation in the American Revolution* (Chapel Hill: University of North Carolina Press, 2016), 252-253.

⁸ Proclamation of Josiah Martin, August 15, 1775, *CRNC* 10: 143.

⁹ Richard R. Beeman, “The Political Response to Social Conflict in the Southern Backcountry: A Comparative View of Virginia and the Carolinas during the Revolution,” in *An Uncivil War: The Southern Backcountry During the American Revolution*, ed. Ronald Hoffman, Thad W. Tate, and Peter J. Albert (Charlottesville: University of Virginia Press, 1985), 230.

¹⁰ Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999), xv-xxi; Michael A. McDonnell, *The Politics of War: Race, Class, and Conflict in Revolutionary Virginia* (Chapel Hill: University of North Carolina Press, 2009).

In North Carolina, the divided nature of the Piedmont meant that, like the Regulation, the imperial crisis that burgeoned into the internal crisis of the Revolution raised important questions about justice, both in the abstract and in the concrete, day-to-day administration of government in the region. On one level, as historian Wayne E. Lee has observed, North Carolinians saw limited, restrained war measures as “evidence of the virtue of the state—indeed, of the legitimacy of the state.”¹¹ In practice, this meant that the newly-created revolutionary state had to exercise restraint in administering criminal justice in the region.

On the other hand, revolutionaries demanded that Americans proclaim their loyalties to a new state, and its leaders acted to compel those who, even if only through their inaction, fell short of this mandate. To put it another way, revolutionaries in the Piedmont, as elsewhere in the colony, criminalized those who refused to join them, expelling them from society in a legal, social, and in some cases, literal sense. The ability to police this new class of criminals was central to the legitimacy of the revolutionary state. But the more demands the state made on its citizens, the more criminals it created, as men refused to take loyalty oaths, resisted conscription and the confiscation or impressment of private property, and increasingly committed open acts of treason and other anti-government behavior.¹² The tenuous hold the revolutionary state maintained

¹¹ Lee, *Crowds and Soldiers*, 136.

¹² Technically, North Carolina did not become a “state” until declaring independence. However, I use the term “state” to refer to the provisional revolutionary government that was formed in 1775, acknowledging that its claims to sovereignty, including the ability to legislate and enforce laws, really took shape in 1777, after independence.

over the region slipped away with the invasion of British forces under General Charles Cornwallis in 1780, and the region rapidly descended into a bloody civil conflict that did not subside until 1783. I examine this period, described by a contemporary observer as “an utter Extinction of Government and...blood and Anarchy,” in the next chapter.¹³ The focus in this chapter is from 1774 to 1780, a period in which North Carolina witnessed almost no active campaigning on the part of regular armies. It was, however, hardly a quiet period in the Piedmont. Rumors of large Loyalist uprisings, approaching British armies, and, for a time, Cherokee attacks kept communities in the region in a near constant state of agitation. In this fraught context, revolutionaries attempted to enforce the Revolution on an anxious, already divided people.

The historiography of the Revolution in the Piedmont has in many ways advanced along similar contours to that of the Regulation. The Carolina backcountry in general has attracted some interest from historians, largely because it illustrates the complexity of the Revolution in the South. In separate essays in an influential edited volume about the Revolution in the southern backcountry, Jeffrey J. Crow and A. Roger Ekirch took differing views on the Piedmont. Crow emphasized class divisions in explaining the brutality of the conflict that erupted in the 1780s, while Ekirch pointed to the political dilemma posed for revolutionary leaders in attempting to tame the region—a concern of this chapter as well. Wayne E. Lee stresses the “breakdown in cultural restraint” in his

¹³ A. Roger Ekirch, “Whig Authority and Public Order in Backcountry North Carolina, 1776-1783,” in *An Uncivil War: The Southern Backcountry during the American Revolution*, ed. Ronald Hoffman, Thad W. Tate, Peter J. Albert (The University Press of Virginia, 1985), 123.

book-length analysis of violence in riots and war in North Carolina as a whole.¹⁴ With the exception of Lee, these historians focus their attention almost entirely on the period after Cornwallis's invasion, glossing over the period between the outbreak of the Revolution and 1780, and no monograph focusing solely on the outbreak of the Revolution in the region exists. The partisan fighting, banditry, and brutal violence that emerged in that year and plagued the region until the end of the war will be treated in the following chapter. The focus of this chapter is the early years of the Revolution, roughly 1774 to 1780, a period of time in which North Carolina actually experienced relatively little open warfare, and almost none in the Piedmont. Yet simmering discontent remained, as one historian has written, a "major threat," one that "could not be defused solely through military force or legislative action." Whig leaders recognized that they could "bolster their claim to representing lawful authority" if they could administer the basic functions of civil government in the backcountry, including punishing criminals.¹⁵ In the early years of the war, the new state government failed this test, at least in the backcountry. The focus on securing the loyalties of many in the region through force or persuasion created a large criminal class who set themselves against those actions of the government they considered unlawful or arbitrary. In the short term, they eschewed pitched conflict, though they in many cases openly resisted the impositions of the Revolution. Worse, the use of the militia by revolutionary committees and the courts to enforce the law,

¹⁴ Jeffrey J. Crow, "Liberty Men and Loyalists: Disorder and Disaffection in the North Carolina Backcountry," in *An Uncivil War*, 125-178; Ekirch, "Whig Authority and Public Order," 99-124; Lee, *Crowds and Soldiers*, 137-224.

¹⁵ Ekirch, "Whig Authority and Public Order," 100.

especially the loyalty oath required after independence, further alienated the population. Looking at the Revolution in the backcountry in this way underscores the point that many ordinary North Carolinians experienced this event especially from 1775-1780, as simply another episode of upheaval after the turmoil of the Regulation. More to the point, the demands of the Revolution again made criminals out of people who protested what they saw as the arbitrary and unlawful behavior of authorities, a development that would have dire consequences as the Whig government lost control of the region in 1780-81.

The Revolution in the Piedmont

Broadly speaking, North Carolina experienced the Revolutionary War in distinct phases. The first culminated with the defeat of a Loyalist force—mostly former Regulators and recently-arrived Highland Scots—at Moore’s Creek Bridge outside Wilmington in February of 1776. Whigs throughout the colonies cheered this victory, which temporarily dashed the hopes of British governor Josiah Martin of regaining control of the colony. The second period, from 1776 to 1780, witnessed scattered partisan fighting, and a shockingly destructive invasion of Cherokee lands, but generally no open military conflict in the Piedmont. The third followed the invasion of a British force under Charles Cornwallis, an event that led to a European-style campaign between Cornwallis and his army on the one hand, and a Continental force under the command of Nathanael Greene on the other. Cornwallis’s invasion precipitated the rising of Loyalists in the backcountry, which led to a final, especially bitter phase of the war—the so-called “Tory war” that lasted almost two years after Cornwallis’s surrender at Yorktown in 1781.

Elite North Carolinians joined resistance to the Stamp Act in 1765-66, with crowds in the coastal towns of Brunswick and Wilmington on the coast mobilizing to stop the collection of stamp duties. Politicians, mainly in the eastern counties, organized to protest the Townshend Duties, and, like many other colonies, formed a committee of correspondence in late 1773 that featured many of North Carolina's leading political lights, including Samuel Johnston, the sponsor of the repressive Riot Act passed in response to the escalating Regulator protests.¹⁶ Maurice Moore, Jr., one of several North Carolina Superior Court justices who angered the Regulators, penned *The Justice and Policy of Taxing the American Colonies in England*, an eloquent and influential critique of the policy of levying internal taxes without representation.¹⁷ North Carolinians vigorously protested the passage of the Tea Act, and, as word spread of the heavy-handed British punishment of Boston in 1774, they made, in the phrase of the day, "common cause" with that beleaguered port city, sending grain and staples through other ports in New England.

Backcountry men and women followed the events of the escalating imperial crisis with interest, but with isolated exceptions in Charlotte, Salisbury, and Hillsborough, most people in the region felt little sense of solidarity with the eastern elites that formed the vanguard of the protests in North Carolina. Largely for this reason, British strategists and Whig revolutionary leaders alike regarded the region as crawling with loyalists. As early as March of 1775, royal governor Josiah Martin assured his superiors in London, even as

¹⁶ Assembly Minutes, *CRNC* 9:740-41.

¹⁷ William S. Price, Jr., "Maurice Moore, Jr." in *DNCB* 304-305.

his government teetered on the brink of collapse, that the “good Spirit” of Loyalism was “spreading and diffusing itself fast in the Western Counties which are by far the most populous part of the Province.”¹⁸ Martin’s optimistic assessment matched the report of one British visitor to Wilmington, who described the attitude of many “Back Settlers” toward mandatory non-exportation measures in October of 1775:

A Messenger had arrived from the Back Settlers to acquaint the People of the Coast, that they (the back inhabitants) would not submit to any Stoppage of their Trade, and that if Their ships were not suffered to proceed with the Produce of the Country, they would come down and burn all the Houses on the Coast...that they could not live except they had a free Trade, and would not obey any Orders to the Contrary...

These small farmers insisted that they had no “disposition to the King’s Service,” and were as “impatient” with British rule as anyone.¹⁹ Still, they did not feel compelled to engage in potentially ruinous economic boycotts, and “the People of the Coast” who orchestrated the colony’s protests against British policy could expect no support on purely ideological grounds from the backcountry. With good reason then, as one historian has written, North Carolina’s Whigs anxiously “contemplated how they could weld together their sprawling, heterogeneous colony” as it lurched toward full-blown revolution.²⁰

¹⁸ Josiah Martin to Earl of Dartmouth, March 10, 1775, *CRNC* 9:1157.

¹⁹ Quoted in Crow, “Liberty Men and Loyalists,” 137.

²⁰ Don Higginbotham, “Decision for Revolution,” in *The North Carolina Experience: An Interpretive and Documentary History*, ed. Lindley S. Butler and Alan D. Watson (Chapel Hill: University of North Carolina Press, 1984), 128.

As historian Robert M. Calhoon has written, “turbulent and shifting forces” militated against anything like a revolutionary consensus in the Piedmont, which generally encompassed a “neutral belt” that extended into South Carolina and Georgia.²¹ These forces included the polyglot nature of the region and a lingering suspicion of eastern political authority from the Regulation, which had been crushed by a force that included many of the colony’s Revolutionary leaders. Former Regulators in particular were seen as generally well-disposed toward the Crown: many of their grievances remained unaddressed in 1775, and they still resented the eastern elites who had opposed them even as they asserted their leadership in the Revolutionary movement. Many were aware that Martin himself had proven sympathetic to the plight of the Regulators and openly contemptuous of the officials who had tormented them. As former Regulator leader James Hunter wrote in 1772, “I think our officers hate him [Martin] as bad as we hated Tryon.” Under Martin, he continued, “the [back]country is as much master now as ever.”²² Unlike many of their contemporaries, then, revolutionary leaders in the Piedmont feared, as John Adams said, “these regulators...” who had “such a hatred toward the rest of their fellow citizens, that...when the war broke out, they would not join with them.”²³

²¹ Robert M. Calhoon, *The Loyalists in Revolutionary America, 1760-1781* (New York: Harcourt Brace Jovanovich, 1973), 442.

²² Quoted in Troxler, *Farming Dissenters*, 125. Martin’s sympathy for the Regulators, or for the backcountry more generally, was politically expedient, but it seems to have been sincere. He counseled several Regulator leaders on the best means of securing a pardon and wrote repeatedly to London describing the legitimacy of the Regulator protests (if not their excesses).

²³ John Adams to Hendrik Calkoen, 10 October 1780, in Charles Francis Adams, ed., *The Works of John Adams, Second President of the United States: Official Letters, Messages, and Public Papers* (Boston: Little, Brown, 1852): 284.

It is difficult to ascertain where the political sympathies of many of the Regulator leaders lay, and Adams's analysis, written from across the Atlantic in Amsterdam about a region and a colony he had never visited, failed to account for any of the longstanding class, economic, and even ethnic concerns that divided the backcountry.²⁴ But North Carolina's Whig leaders shared his fears. In an appeal for the support of former Regulators, the Third Provincial Congress stipulated in August of 1775 that the "late Insurgents...ought to be protected from every attempt to punish them by any Means whatever" for their role in the Regulator insurrection. The Congress explicitly framed this measure as a deliberate attempt to head off the efforts of the "Enemies of the Liberties of America" in appealing to these still-disaffected men.²⁵ In North Carolina, then, control of the Piedmont, by then the fastest-growing region in British North America, was very much in the balance throughout the early years of the Revolution.

Committees of Safety

The Revolution in the Piedmont began in earnest with the establishment of revolutionary committees of safety, which emerged in the winter of 1774-75. In many ways, these organizations, established at the county, town, and eventually provincial levels, embodied a central paradox in the American Revolution, or at least a disconnect between Revolutionary rhetoric and practice. They were, as one early twentieth century student observed, a "unique combination of democratic spirit and oligarchical methods—

²⁴ Kars, *Breaking Loose Together*, 5.

²⁵ Provincial Congress Minutes, *CRNC* 10:169.

a tyrannical administration by patriots seeking individual and national liberty.”²⁶ These committees were first proposed by the First Continental Congress in an attempt to enforce the so-called “Association,” an non-importation and non-consumption agreement between the colonies. This measure was a response to the Coercive Acts passed by Parliament in 1774—punitive measures in the wake of the so-called “Boston Tea Party” that were intended to crush the burgeoning revolt in Massachusetts. The “Association” agreed upon at the First Continental Congress called for a boycott of all British “goods, wares, [and] merchandise,” and called for the formation of committees at the county and town level “to observe the conduct of all persons touching this association.” Transgressors who purchased British goods faced public shame and economic isolation, enforced by the committees. Beyond this, the Association urged Americans to forego “every species of extravagance and dissipation, especially all horse-racing, and all kinds of games, cock fighting, exhibitions of shews, [and] plays.” These strictures even extended to funeral observances—the Association condemned anything more ostentatious than wearing a black ribbon to mourn the “death of a relation or friend” as frippery. While North Carolina’s First Provincial Congress recommended the formation of county committees of correspondence in the fall of 1774, only Rowan and Pitt complied. It was the Continental Association that led to the development of committees of safety throughout the region and the rest of the colony.²⁷

²⁶ Bessie Lewis Whitaker, “The Provincial Council and Committees of Safety in North Carolina,” *James Sprunt Historical Monograph*, ed. J.G. de Roulhac Hamilton, ed. (Chapel Hill: University Press, 1908).

²⁷ “The Articles of Association, October 20, 1774, at http://avalon.law.yale.edu/18th_century/contcong_10-20-74.asp (accessed August 25, 2018); Alan D.

Historian T.H. Breen has recently argued that the Association was a “truly radical declaration” precisely because it called for the creation of revolutionary committees to enforce it. Taken as a whole, the committees comprised a “framework for sustaining and strengthening the insurgency,” and, significantly, they “took their cue” from the proto-national, quasi-legislative gathering that was the First Continental Congress. All in all, Breen argues, they were “laboratories for republican rule” before independence, and they wielded a degree of power that was particularly marked in the backcountry.²⁸ The committees were chosen by freehold elections in each county, and in that sense were—at least theoretically—more representative of local communities than the county courts.²⁹

By August of 1775, there were committees in twenty-six North Carolina counties, including most of the Piedmont, and they had become instruments of the emerging revolutionary state, formally connected to first a Provincial Council, and then a North Carolina Council of Safety. Each of these bodies was established by the series of provincial congresses that gathered during the early stages of the Revolution.³⁰ Their success in enforcing non-importation was remarkable—imports into North and South Carolina fell from £378,116 in 1774 to just £6,245 in the following year.³¹ Surviving

Watson, “The Committees of Safety and the Coming of the American Revolution in North Carolina, 1774-1776,” *NCHR* 73, no. 2 (April 1996): 134.

²⁸ T.H. Breen, *American Insurgents, American Patriots: The Revolution of the People* (New York: Hill and Wang, 2010), 170.

²⁹ Watson, “Committees of Safety”, 132.

³⁰ *Ibid*, 136-137.

³¹ Hugh T. Lefler, Albert R. Newsome, *North Carolina: The History of a Southern State* (Chapel Hill: University of North Carolina Press, 1963), 189.

records—the Rowan committee is one of the few for which extensive records exist—indicate that the committees met at least once a month, with around twenty committeemen present.

The committees assumed a number of roles traditionally belonging to county courts, but their mandates were expanded considerably by the Revolutionary crisis. For example, they bought and requisitioned shot and gunpowder, in addition to salt and other essential war materials. They supervised road maintenance and militia musters, and in several instances, they attempted to curb inflation through price controls. Overall, revolutionary committees of safety attempted to enforce a degree of conformity on a population unsure of what course to take in the bewildering early days of the Revolution in North Carolina. Significantly to this study, the revolutionary committees, as one historian has written, “assumed certain judicial authority in their trying and punishing violators of the Association.”³² They silenced opposition, and especially violations of non-importation agreements, through threats and ostracism, mobilized local militia, and organized protests against Crown policy, among many other activities. There is no evidence that the activities of these committees in the North Carolina backcountry were any more heavy-handed than those of eastern towns like New Bern or Wilmington, or certainly northern communities like Exeter, New Hampshire, where a committee flatly threatened to subject a refractory merchant to an “experiment...of Tar and Feathers.”³³

³² Harry M. Ward, *The War for Independence and the Transformation of American Society* (London: UCL Press, 1999), 11.

³³ *Ibid.*

Still, they wielded considerable power in a region notoriously averse to authority and, generally speaking, far less sympathetic to the revolutionary cause than the residents of the Lower Cape Fear or the Albemarle region.

Committees retained many of these roles through the first year of the war before being reorganized under state control after 1776, becoming in the process the main instrument of criminal justice in the region. They summoned witnesses, took sworn testimony, adjudicated some civil disputes, and passed sentences on men found to have opposed revolutionary measures in the region. Despite their claims to community consensus, and their general attention to procedural rules, they wielded power that always smacked of arbitrariness—it was backed by force, not law. The Rowan committee in particular was aggressive in its activities. During this period, John Perkins, like dozens of individuals throughout the region, was brought before a committee and forced to “give an account of political sentiment relative to American freedom.”³⁴ Those who refused to swear allegiance faced incarceration—Jacob Beck, for example, was committed to the Salisbury jail for his “notorious contempt of [the] Committee and Opposition to American Measures.”³⁵ The committee frequently used the militia to enforce these measures, as it did when it ordered one of its members, a militia officer, to take a “sufficient guard of men” to “compell the appearance of Alexander Allison and John Hale” at the next session.³⁶

³⁴ Rowan County Committee of Safety Minutes, September 21, in *CRNC* 10:254.

³⁵ Rowan Committee Minutes, *CRNC* 10:317.

³⁶ *Ibid.*, 310.

The case of Benjamin Booth Boote, a local attorney, illustrates the experience of many who ran afoul of the committees. In July of 1775, the Rowan County committee summoned Boote to appear, claiming that he had received and handed out copies of a proclamation by royal governor Josiah Martin that, among other things, denounced the actions of the revolutionaries as “crimes of the most dangerous nature.” This was the same document that landed John Ross Dunn in the predicament described earlier in this chapter. When Boote refused to appear, the Committee dispatched a guard of the “Youth in Salisbury” to “prevent the conveyance of all sustenance to him until he deliver up the aforesaid letters.” Area Whigs apparently viewed Boote as a particularly dangerous figure—he earlier faced censure from the committee for writing a “Protest” full of “false, scandalous, wicked and impertinent” allegations “bordering on Blasphemy.” The committee ordered that the offending document should be “put up against the two posts of the Gallows and the whipping post to demonstrate the contempt in which the Committee hold the authors of so infamous a performance.”³⁷ Eventually Boote was arrested and sent to South Carolina along with Dunn.

Many other men brought before the committee quickly acquiesced to the new political realities in the backcountry. Even Matthias Sappinfield, named as an “incorrigible enem[y] to American Measures” yielded to the committee. “After some time,” Sappifield “cheerfully signed the Test, [and] proclaimed his hearty approbation of

³⁷ Rowan County Committee Minutes, *CRNC* 10:134-137, 10:72-75. The offending proclamation by Martin is in *CRNC* 10:19. The Provincial Congress that convened at Hillsborough in August of 1775 ordered that the proclamation be “burnt by the common Hangman.” Provincial Congress Minutes, *CRNC* 10:180.

the American Measures.”³⁸ What exactly occurred while Sappinfield was held in captivity is not recorded—any threats, cajoling, or negotiations that transpired “after some time” before the committee are obscured by what historian T.H. Breen has called the “bureaucratic silences” of the almost universally laconic committee documents.³⁹ However suggestive these silences, it is clear that it remained critical for Whig leaders to secure the loyalties of prominent local figures, and that they did not stand on ceremony in dealing with such men. After several suspected Loyalists were hauled before the Wilmington committee in 1775, an observer unsympathetic to the Whigs wrote that “every threatening was used to make them comply” with demands to sign a “Test,” or “Association,” terms used interchangeably to describe a document pledging support for the whig cause.⁴⁰ In Anson County, one man described being taken into custody by representatives of the committee, who condemned him as a “damned scoundrel” and an “Enemy to the Country.” After threatening him with a whipping and mockingly asserting that the “King’s crown tottered upon his shoulders,” the “Committee of Divers persons disaffected to Government” let him go.⁴¹

Assuming that “designing” and influential men could lead ordinary people astray, committee members frequently met with prominent men in areas deemed less than

³⁸ Rowan County Committee Minutes, *CRNC* 10:317.

³⁹ Breen, *American Insurgents, American Patriots*, 186-87.

⁴⁰ Janet Schaw, *Journal of a Lady of Quality; Being the Narrative of a Journey from Scotland to the West Indies, North Carolina, and Portugal, in the Years 1774 to 1776*, ed. Evangeline Walker Andrews (New Haven: Yale University Press, 1921), 194; Watson, “Committees of Safety,” 143.

⁴¹ Deposition of Jacob Williams, *NCCSR* 10: 126-127.

enthusiastic about the revolutionary cause, including the Forks of the Yadkin (River) north of Salisbury. After a contingent from the Rowan committee conferred with local leaders there, a Baptist minister identified as “Mr Cook” appeared before the committee to profess his “Sorrow...in the most explicit and humiliating terms” for signing a protest against “the Cause of Liberty” that had circulated through the area.⁴² A Separate Baptist minister in Anson County was arrested and sent to appear before the state committee in Edenton not for explicitly advocating the Loyalist cause, but because he had exhorted his congregants “not to bear Arms, either Offensively or defensively” as a matter of religious scruple. In this case, the imperative of a revolutionary consensus superseded religious conscience.⁴³

Committees sought to regulate individual behavior in ways that county courts in the region had never before attempted. As described above, this included proscribing and isolating local merchants (many of whom had Loyalist sensibilities) who sold their wares at higher than mandated cost. In June of 1775, for example, the Rowan County Committee ordered that Maxwell Chambers, a local merchant, “be publicly advertised in the South Carolina Gazette as an Enemy to the common cause of Liberty, for raising the price of his goods higher than he sold at a year past, contrary to the Direction of the Continental Congress.” At the same time, the committee forced other merchants to

⁴² Rowan County Committee Minutes, *CRNC* 10: 134.

⁴³ Kars, *Breaking Loose Together*, 213-214; *CRNC* 6:699-700. Kars suggests that Childs was sent to Edenton to stand trial, but it seems more likely that he was paroled there without trial—sent, in all likelihood to an area where he could be kept under surveillance and where his “Doctrine” would have less popular appeal.

surrender powder for the use of the state rather than selling it for profit.⁴⁴ In August of 1775, the Surry County committee resolved to conform with the Association by acting to “suppress all Immorality and Vice, all kinds of sporting Gaming, Betting or Wagering whatsoever.”⁴⁵ The success of these committee in doing so is impossible to ascertain. As discussed in the first chapter, regulating morals was never an especially high priority in backcountry courts, and it seems very likely that these frivolous pursuits continued in the Piedmont, as elsewhere. But the fact that the revolutionary committees tried to regulate the behavior of their communities was a highly significant and provocative act. Over time, these strictures would essentially criminalize neutrality. They also attempted to, in the absence of courts for adjudicating property disputes, ensure that private property was protected, making judgments in cases of equity.

One Moravian chronicler remembered that until 1776 “most of the inhabitants in the land had associated themselves together against Great Britain, but...had patience with those who would not join the Association.” But beginning in 1776, as many began to support the “King in word and deed, the [Whigs] began to take measures against them.” Rowan County officers, acting on the orders of the Committee, seized the guns of all non-associators, even those who had not taken positive action against the Revolution.⁴⁶ Many in the region would have remembered that Tryon had also confiscated the weapons of those suspected of Regulator sympathies in the aftermath of Alamance, a measure with

⁴⁴ Rowan County Committee Minutes, *CRNC* 10:10.

⁴⁵ Surry County Committee Minutes, *CRNC* 10:251.

⁴⁶ *MR*, 3:1024.

real consequences for many men who supplemented their livelihoods by hunting and selling deerskins. None of these measures took place in a vacuum—in face-to-face communities like those of the Piedmont, one’s peers would have been aware of their interactions with the committee. This, indeed, was the only way that publicly shaming violators of the Association was possible. As one recent historian has observed, the actions of the Committee, like those of the courts, afforded considerable agency to the people “out of doors,” who could choose what, if any, further penance an individual might have to perform before he—and there are no records of women examined by committees in the Piedmont—was admitted back into society.⁴⁷ The committees consistently sought to portray themselves as protectors of the “good people,” preservers of order, in their communities—hence the word “safety” in their titles—and emphasized the marginal status of the “disaffected” people in their midst.

It is difficult to assess the extent to which the measures taken by the committees represented the will of the communities they represented. What is clear is that they hardly represented the vanguard of a plebeian revolution in the backcountry. The composition of the committees, dominated by ambitious backcountry elites, suggests the influence of longstanding political realities as much as revolutionary change in the North Carolina Piedmont. Griffith Rutherford, for example, who had been a close associate of Regulator nemesis John Frohock, serving as sheriff and a justice of the peace in Rowan County—was quickly named to the Salisbury District Committee, where he joined other powerful

⁴⁷ Barbara Clark Smith, *The Freedoms We Lost: Consent and Resistance in Revolutionary America* (New York: The New Press, 2010), 38.

regional politicians. On the strength of this and his depredations on the Cherokee towns, he became among the most influential and uncompromising Whig leaders in North Carolina, advocating stringent confiscation measures against former Loyalists and punitive taxation against the pacifist Moravians and Quakers in the Piedmont.⁴⁸ Over one-third of the men who served on the Tryon County committee were justices of the peace or sheriffs at one point, and during a brief period of overlap between the committees and the courts, some men served in both capacities. Samuel Spencer, whose behavior as Anson County clerk of court aroused the ire of the Regulators, became a particularly aggressive chairman of the Anson County committee, threatening one Loyalist with “seizing and selling his Estate for the Support of the American Troops” and urging former Regulators to abjure the loyalty oath (that, as clerk, he had possibly administered) taken after the Regulation on the grounds that “George the Third had broke his Coronation Oath.” Spencer became a Superior Court justice for the new state of North Carolina in 1777. In addition to these notable figures, the names of court officials—clerks, constables, justices of the peace, and other prominent local men appear throughout the lists of committee members.⁴⁹ Unsurprisingly, the names of just a handful of men who signed Regulator petitions appear among the names of the known members of the revolutionary committees of safety in Rowan, Anson, Guilford, Tryon, and Surry counties—the only committees for which intact minutes survive.⁵⁰ In many cases, then,

⁴⁸ Jerry C. Cashion, “Griffith Rutherford,” in *DNCB* 5:275-76.

⁴⁹ Deposition of Samuel Williams, *CRNC* 10:125-26; Deposition of James Cotton, *ibid.*

⁵⁰ Cross-referencing the over one hundred names listed in the surviving committee minutes from Piedmont counties with a list of nearly nine hundred names and signatures affixed to Regulator documents

the men who administered justice on the committees were the same local elites who did so as court officials before the Revolution.

None of the committees for which records exist—Rowan, Guilford, Surry, and Tryon—evinced the same preoccupation with the behavior of the region’s enslaved people that characterized the eastern regions. Compared to coastal regions, particularly the lower Cape Fear, the enslaved population in the Piedmont was quite low as the Revolution approached. In 1767, almost thirty percent of the population of Granville County, where tobacco cultivation was the primary economic pursuit, was enslaved, but black men and women made up less than ten percent of the population of the rest of the Piedmont (as defined in this study).⁵¹ Unlike the Pitt County Committee, which responded to fears of a “deep laid Tragick Plan” for a slave revolt by “examining and scourging” the county’s enslaved population, the extant committee records of the Piedmont are silent on slavery.⁵² Still, as I argue in Chapters Four and Five, Revolutionary leaders, especially in the later years of the war, took steps to police slaves in the region, who were generally viewed with fear and suspicion. Many Piedmont revolutionaries saw their most dangerous

reveals only nine matches. Of these, only three (Matthew Locke, Samuel Young, and James Wilson from the Salisbury committee) appear likely to have been the same person. The list of Regulator signatures is in Troxler, *Farming Dissenters*, 159-166. As Troxler stipulates, the list itself is not a list of “Regulators,” but rather men who had at some point in the movement chosen to voice their grievances by affixing their names to petitions.

⁵¹ Marvin L. Michael Kay and Lorin Lee Cary, *Slavery in North Carolina, 1748-1775* (Chapel Hill: University of North Carolina Press, 1998), 222. These numbers are based on estimates extrapolated by Kay and Cary from known numbers of “taxable” in 1755. The records of taxable from 1767 are less complete. See also Kay and Cary, “A Demographic Analysis of Colonial North Carolina with Special Emphasis upon the Slave and Black Populations,” in *Black Americans in North Carolina and the South*, ed. Jeffrey J. Crow and Flora J. Hatley (Chapel Hill: University of North Carolina Press, 1984).

⁵² John Simpson to Richard Cogdell, July 15, 1775, *CRNC* 10:94-95.

internal enemies in the western reaches of the colony. The Rowan Committee in particular was concerned with the possibility of attack by the Cherokee. The committee claimed that the British “loose upon our frontier a Torrent of Blood by the Savage Rage of Indian Barbarity, who are ordered a supply of Arms and Ammunition by Lord North immediately to attack us, and repeat the inhuman Cruelties of the last War, Ripping Infants from the wombs of their expiring mothers, roasting Christians to Death by a slow Fire.”⁵³ Whigs exploited fears of Cherokee attack to drum up volunteers for the Rutherford expedition into the Cherokee towns, but also to justify domestic measures that may otherwise have been viewed as extreme. Citing the Cherokee threat in the summer of 1776, the Rowan Committee seized all powder in Salisbury and later jailed Ambrose Mills, a Tryon County Loyalist, for attempting to “cooperate with the Indians in subjugating these United States.” The committee sent Mills to the Salisbury jail, where he was barred from any contact or correspondence with outsiders.⁵⁴ Tories, then, were explicitly associated with Cherokees, the subjects of open and unabashed calls for extermination among North Carolina’s elite.

The advent of the revolutionary committees heralded a new relationship between the people of the North Carolina backcountry and their government. According to revolutionary rhetoric, this was inherent to living in a republican society in which—in

⁵³ Rowan Committee Minutes, August 1775, *CRNC* 10:135. “The last war” refers to the French and Indian War. Surry County in the northwest corner of the Piedmont had experienced sporadic attacks during that conflict, which also witnessed an attack on Fort Dobbs, in the western regions of Rowan County.

⁵⁴ Rowan Committee Minutes, August 1776, *CRNC* 10:730.

theory, at least—citizenship was a volitive act. In practice, however, people in the Piedmont and elsewhere had little choice. The revolutionary committees were instruments through which, as one historian has put it, “the whigs attempted to impose their will on an ethnically and culturally heterogeneous population.”⁵⁵ One problem this posed was that, lacking a civilian law enforcement apparatus, the committees, like the courts that were reestablished after 1776, had only the militia to enforce their mandates. The militia remained the primary instrument of law enforcement after the reestablishment of the courts in the backcountry. The arbitrary nature of their actions created a political quandary, because, as one historian has observed, it put the militia, as the tool of enforcement for the committees, “in opposition to private persons, and at a site traditionally supposed to be secure from violence: their home.”⁵⁶ Even under the stress of the Revolution, leaders were acutely aware that their actions could have political consequences, and they were conscious, as the state courts would later be, about behaving arbitrarily. Several members of the Salisbury Committee, for example, protested the treatment of Boote and Dunn, who were imprisoned in Charles Town without trial. After agreeing to indemnify their captors against future lawsuits—a tacit, if unintentional acknowledgement by the committee of the illegality of arbitrarily imprisoning dissidents—the two men were allowed to return to North Carolina.⁵⁷

⁵⁵ Crow, “Liberty Men and Loyalists,” 126.

⁵⁶ Lee, *Crowds and Soldiers*, 158.

⁵⁷ CRNC 10:673-78; Robert O. Demond, *The Loyalists in North Carolina During the Revolution* (Durham: Duke University Press, 1940), 108-109.

The experiences of the people who ran afoul of the committees attest eloquently to the power these revolutionary organizations wielded in the backcountry. Yet they still lacked the legitimacy conferred by association with a legitimate state. After declaring independence and establishing a new government, North Carolina's revolutionary leaders set up a court system. While the committees represented a sort of transitional phase between colony and state, they played a crucial role in creating that state, especially by naming and punishing, insofar as they could, its enemies. The committees worked to establish a class of people, and a set of ideas, that were outside the law, and outside society, before the law even existed. In so doing, the committees helped create a revolutionary society defined in part in opposition to its (criminal) enemies. With the establishment of the new independent state of North Carolina, the courts would take up—indeed, expand upon—the work of the committees in the backcountry.

The Criminal Courts in the Revolution

Independence, by establishing North Carolina as a sovereign state, eventually obviated the need for revolutionary committees, and thus some of the concerns about legitimacy raised by their actions. But as the exigencies of war, and popular dissatisfaction with the actions of the revolutionary state intensified, the courts enforced laws that essentially criminalized neutrality, creating new criminals even as they struggled to maintain order in the Piedmont. The Fifth Provincial Congress, held in Halifax in late 1776, ratified North Carolina's first constitution. While hardly radical, the North Carolina constitution included several democratic provisions—many of which had been demanded by the Regulators—including a clause that allowed judges to be chosen

by the legislature.⁵⁸ In addition to these changes, the new government reestablished county courts and created special courts of oyer and terminer to handle the backlog of cases that had developed after the courts were closed. Superior Courts, established by the newly-created General Assembly in the spring of 1777, eclipsed the revolutionary committees throughout the state. These courts served districts organized along similar lines to the ones preceding independence, with the Salisbury and Hillsborough Districts encompassing the Piedmont.⁵⁹ There were six Superior Court districts in all, and three justices—Samuel Ashe, Spencer, and James Iredell—presided over biannual sessions in the seat of each district. The Assembly also established county courts virtually identical to those that had existed pre-independence, with several serving new counties in the region.⁶⁰

As the Revolution progressed, the newly-created General Assembly took legislative steps to rein in dissent and other counter-revolutionary activities, legally mandating loyalty oaths and passing a broad-ranging law of treason that encompassed almost any act of open defiance. Refusal to take the “Test,” or indiscrete comments about “Liberty Men” in local taverns, had admittedly unpleasant consequences for men brought

⁵⁸ Jackson Turner Main, *The Sovereign States, 1775-1783* (New York: Franklin Watts, Inc., 1973), 170. The Assembly took other measures to appeal to western people, including forming the formation of nine new counties in the Piedmont westward in 1777-79. Still, the region remained dramatically underrepresented throughout the era covered by this dissertation, and even until the mid-nineteenth century. David Leroy Corbitt, *The Formation of the North Carolina Counties, 1663-1943* (Raleigh: Division of Archives and History, 1987).

⁵⁹ *NCCSR* 11:xix; “Acts of the North Carolina General Assembly,” *SRNC* 24:36-39.

⁶⁰ *Iredell Papers*, 1:xxviii. The other Superior Court sessions were held in Halifax, Edenton, New Bern, and Washington.

before the committees. But with the advent of a revolutionary government, dissent—and even neutrality itself—became illegal. In 1778, for example, a grand jury indicted John Depoyster, a “disaffected” Rowan County planter, for “wickedly and seditiously intending and designing to stir up and excite Tumults and Disorders in this State.” More specifically, his bill of indictment reveals, Depoyster spoke “the following seditious words: ‘Huzzaw for King George.’”⁶¹

Ironically, as first the committees and then the courts attempted to impose order on the backcountry by lining its members up behind the Revolution, some evidence suggests that crime actually increased in frequency in the region. From the time news of Lexington and Concord reached the backcountry, Moravian observers in particular reported an increase in disorder. As one Moravian correspondent reported in the fall of 1775, “on account of the present condition of things, the laws are not being enforced...theft and robbery are frequent.” One Moravian farmer in Bethania, having already been robbed of “all sorts of things” from his house, had his mare and saddle stolen. Later, in 1776, men believed to be deserters entered Salem with “godless and murderous intentions,” damaging several buildings and wounding several men before they were apprehended. More than once, Moravian chroniclers voiced the opinion that they had been targeted because would-be criminals calculated that the Brethren, who refused to take loyalty oaths, would be protected by the law.⁶²

⁶¹ True Bill, *State v. John Depoyster*, SDSC Criminal Action Papers, 1778, NCA.

⁶² *MR*, 2:885, 1066, 1215, 1245. As Wayne Lee observes, the Moravians, especially those leaders who kept records for the community, had a “low standard for disorder.” They tended to find “disturbances” or “trouble” around them in the best of times. Still, they kept highly detailed records, and being

Moravian complaints about escalating disorder notwithstanding, courts in the Piedmont went about their business, first meeting as courts of oyer and terminer to hear crimes and then taking up civil cases as Superior Courts. Court officials picked up where the committees had left off, but with the imprimatur of state law behind them. In 1777, for example, two groups of Rowan County men were indicted for sending a petition “Injurious to the Independence of this State” to governor Josiah Martin. After it was established that they had taken an oath of allegiance to the state, these men were discharged by the court. In the short term, these offenses were the only ones directly linked to political affairs in the backcountry—the court otherwise heard a series of fairly typical assault, burglary, and horse stealing cases.⁶³ County courts, in most cases, were responsible for administering loyalty oaths. In the fall of 1779, the Salisbury District Superior Court heard at least three criminal cases, involving horse stealing, counterfeiting, and vagrancy. As punishment for his crime, the man convicted of vagrancy was drafted into the Continental Army, a controversial but fairly routine sentence that reveals much about the demand for troops at the height of the war.⁶⁴

Though hundreds of North Carolinians served in the Continental Army throughout the war, independence, and the establishment of a new government were followed by relative quiet throughout the state. North Carolina witnessed no major

scrupulously neutral, their accounts of events around them are largely free of other ideological biases. Lee, *Crowds and Soldiers*, 157.

⁶³ Minutes, Salisbury Court of Oyer and Terminer, March 1777, *SRNC* 22: 501-513.

⁶⁴ *Iredell Papers*, 2:147n.

operations from the pivotal Patriot victory at Moore's Creek Bridge in early 1776 to Cornwallis's invasion of the region in the fall of 1780. Even the threat of Cherokee invasion, an especially visceral fear for people in the region old enough to remember the French and Indian War, subsided after troops from North and South Carolina under Griffith Rutherford laid waste to over thirty of the Valley and Middle Cherokee towns, a brutal campaign that ultimately led to the punitive 1777 Treaty of Long Island between North Carolina, Virginia, and the Cherokee Overhill towns.⁶⁵ Despite the relative calm of the late 1770s, Loyalism was widely regarded as a growing internal threat throughout the period, and Loyalists themselves became a criminal class that the courts devoted themselves to suppressing.

For many, loyalty oaths remained an intrusive and repugnant aspect of Whig rule. As noted above, revolutionary committees had administered test oaths since the escalation of the imperial crisis in 1774. But whether for religious or ideological reasons, or simply out of an aversion to authority, thousands of North Carolinians found the Assembly's new requirement particularly obnoxious. Some former Regulators, having been forced to swear loyalty to the Crown after the battle of Alamance, were reluctant to abjure that oath, a measure of the solemnity of oaths in the minds of many eighteenth-century people. The new oath went well beyond the test in its demands on the taker, citing a threat posed by "divers persons whose intentions are inimical to the State." These people would surely "carry such Intentions into Practice" if the state were invaded by the

⁶⁵ Robert L. Ganyard, "Threat from the West: North Carolina and the Cherokee, 1776-1778," *NCHR* 45, no. 1 (January 1968), 47-66.

British, but until then, they were hidden in plain view, a sort of fifth column awaiting that opportunity. “[A]rtfully in their open Demeanor and Deportment [they] betray no such Design, whereby from not incurring particular Suspicion, they have escaped being cited.” The oath was a means for exposing—legally and rhetorically—this hidden internal enemy. Oath-takers swore not only to “bear faithful and true Allegiance to North Carolina,” but to “disclose and make known...all Treasons, Conspiracies, and Attempts, committed or intended against the State.”⁶⁶ Those who failed to appear for their trial received the extraordinary sentence of banishment from the state.⁶⁷ By law, any person who refused to take the oath was barred from bringing lawsuits, and was essentially deprived of the protection of the law. As one observer wrote, this law meant that “any one who would not swear Allegiance to the State,” among other offenses, “...had no standing before the Law, his legal right being suspended until further order.”⁶⁸ Through this act, the General Assembly created thousands of outlaws, and mandated civic participation through the denunciation of those fellow citizens who posed a threat to the state.

Despite the consequences, many North Carolinians still resisted. When William Giles and Nicholas White, two Rowan County men, were cited by Griffith Rutherford for their “disaffection to...the united States of America,” they refused to take the oath of allegiance, and were ordered, pursuant to an act passed by the General Assembly, to

⁶⁶ General Assembly Laws, *SRNC* 24:86.

⁶⁷ *Ibid*, 149.

⁶⁸ Bagge Manuscripts, 1778, *MR* 3:1203-1204.

depart the country within two months. When they refused to obey this ruling, they were taken under armed guard to New Bern, where they were to be “exported” to Europe or the West Indies. Faced with this sentence, and “having been interrogated,” they took the oath.⁶⁹ Giles and White were not alone in their reluctance to swear allegiance to the state. As late as 1779, the Rowan County Court calculated that 577 people in the county had not yet taken the oath, a situation that seems to have been nearly universal. The Court’s tally of refractory Rowan County citizens was taken after the state expanded on the bureaucracy established in the early years of the war, ordering that counties be divided into districts run by militia officers. These local leaders were identifying those inhabitants who had not taken the oath. These men would then appear before justices of the peace or magistrates. Militia officers, many of whom were also justices, were empowered to seek out and punish those who refused. In response, a steady trickle of men, including some with less than convincing revolutionary bona fides, took the oath. Benjamin Booth Boote acquiesced after returning from his captivity, swearing allegiance to the state in August of 1777.⁷⁰

Still, many continued to resist this requirement. At a Rowan County militia muster, which also doubled as a day for administering the oath, a riot broke out as several men flatly refused to take what Loyalists and many neutrals contemptuously called a “blackjack.” Two men nearly came to blows after one accused the other of having

⁶⁹ Minutes, Rowan County Court of Pleas and Quarter Sessions, August 8, 1777, NCA.

⁷⁰ Ibid, May 1778, NCA. Boote would later renege on his oath, joining the British army after Cornwallis invaded the backcountry.

“swallowed that black Jack,” but after being persuaded that the latter had not, in fact taken the oath, the men “drank friends together [and] with a great Shout Horawd for King George the third.” This was one of several such incidents in Rowan County, where another man was indicted for treason after warning that “at the next Court (when oaths would be administered) there would be bloody work.”⁷¹

The first such law, passed by the Assembly in 1777, was first aimed at “Factors, Storekeepers, or Agents” as well as erstwhile royal officials. By the end of the year, an amendment mandated the oath for all males over sixteen years of age. It also expanded on previous measures by empowering the courts to order sheriffs to “seize and sell...the Goods and Chattels, Lands and Tenements” of those who willfully refused to take the oath.⁷² This “Confiscation Act” was particularly obnoxious to backcountry residents, largely because it predictably led to abuses by avaricious government officials, as one Moravian chronicler recorded:

A person who had not sworn allegiance to the country dared not enter land, not even that on which he lived; but one who had taken the Oath might enter the farm of a non-juror [i.e. one who had not taken the oath] of which some availed themselves and turned the rightful Owner out of house and home, and he had no redress. Soon the Land Office in each County became a veritable Inquisition. If a man came to enter land he was asked whether he had taken the State Oath? If the answer was Yes he must be able to prove it twice and thrice; if the answer was No he was sent away with mockery and abuse.

⁷¹ Deposition of George Redman, Salisbury District Criminal Action Papers, 1779; Examination of Conrad Winckler, *ibid.*, 1779.

⁷² General Assembly Laws, *SRNC* 24:10-11, 85; Demond, *Loyalists in North Carolina*, 156. “Factors” were representatives of British merchant companies in the colonies. Their vested interest in maintaining imperial connections made them immediately suspect.

“Many persons among us,” the writer went on, “planned to take advantage of the opportunity...and to possess themselves of land belonging to the Brethren.”⁷³ As discussed in the previous chapter, the distraint of property for refusing to pay taxes was a major complaint against local government in the pre-Revolutionary Piedmont. Confiscation proved at least as controversial. Moreover, the courts began in 1778 to deploy militia parties to search the countryside for men who had yet to take the oath—a practice known as “Tory scouring” that aroused even more antipathy among backcountry farmers and led to countless violent confrontations throughout the region.⁷⁴

Other men faced criminal action not because of their refusal to take the oath, but for actively and unambiguously voicing disapproval of the Revolution. An Anson County planter named James Usher was indicted for publicly saying “God damn the State” and that he would “at no time fight for the State.” Henry Daniel, a “vagrant,” flatly refused to take the oath, telling his examiner that he hoped “god would keep him from the marke of the Beast...for he had never had justice done him from the State.” Daniel went further, warning that “he would Shoot the first officer that would Offer to Command him...[and] if he was taken by any arbitrary power...he would take the...Lives of...every such person.”⁷⁵

⁷³ Bagge Manuscript, in Fries, ed., *MR* 3:1205-1206.

⁷⁴ Lee, *Crowds and Soldiers in Revolutionary North Carolina*, 170.

⁷⁵ Examinations of James Usher and Henry Daniel, Salisbury District Criminal Action Papers, NCA, 1778.

Other men repeated gossip about faraway battles and campaigns, with Loyalist sympathizers threatening retribution when British forces finally arrive. John Coplin confessed to the court in Hillsborough that he “did Report Sum time ago as he went threw the Hawfealds in Orange County that the English was at Salsbury, and that the Tories had [risen] at Deep River which he confest he Himself did not Believe.”⁷⁶ John Numan in Anson County testified that he heard from Nathaniel Biven, a local Loyalist, that the “whole Unighted States was Rising...to fight for the King of Grate Britan.” Biven advised Numan to “Lye Nutral” until the opportunity to fight arose. One Rowan County man taunted a group of whig sympathizers by claiming that “fifty of Hows [General Howe] light horse had drove nine hundred of General Washington’s men...what was your men good for?” Forbush, a Salisbury shopkeeper, warned that his neighbors would soon suffer for rebelling against the Crown. “Their was no way to bring Love and fear,” he said, “like Sevear whipping.”⁷⁷

After independence from Great Britain, the former colonies turned states had a new crime to prosecute: treason against the state. While relatively few people were actually convicted of treason during the war, particularly before 1780, the revolutionary-era courts were full of treason cases, to the extent that this, the most odious of crimes under English common law eclipsed other offenses. The definition of treason had a long history in English common law. William Blackstone’s *Commentaries on the Laws of*

⁷⁶ Hillsborough District Criminal Action Papers, NCA, 1780.

⁷⁷ Deposition of John Numan, Salisbury District Criminal Action Papers, NCA, 1778; Examination of John Hazzen, Ibid, 1778.

England, a major source of legal authority for North Carolina's lawmakers, attorneys, and jurists, claimed that from early in English legal history, "if a man...levy war against our lord the King in his Realm," then he was guilty of treason. Over time, the definition of high treason expanded to include being "an adherent to the King's enemies in his realm, giving to them aid and comfort in the realm." By the seventeenth century, counterfeiting, being a "breach of allegiance...by infringing the King's prerogative," was also deemed treason, "though not quite equal in its punishment."⁷⁸

Blackstone and other English legal authorities stressed the importance of precision in the application of treason laws, citing Montesquieu, who warned that [v]agueness in the crime of high treason is enough to make government degenerate into despotism."⁷⁹ Parliament eventually, following the Glorious Revolution, required the testimony of two witnesses to obtain a conviction for high treason. This important procedural requirement would eventually be inscribed in American jurisprudence by the Constitution, and it was also stipulated during the Revolution in the North Carolina treason law passed in 1777. On a national level, treason was first defined in the articles of war issued for the Continental Army by the Continental Congress in 1775. In January 1776, the Congress passed a "Tory Act" that urged local committees to disarm "such

⁷⁸ William Blackstone, *Commentaries on the Laws of England*, 16th ed. (London: A. Strahan, 1825) 4:81-89. Blackstone lists other offenses deemed treasonous, including imagining the death of the sovereign and violating the king's wife, eldest daughter, or daughter-in-law. For the significance of Blackstone's *Commentaries* in North Carolina courtrooms during and after the Revolution, see Lars C. Golumbic, "Who Shall Dictate the Law?: Political Wrangling between 'Whig' Lawyers and Backcountry Farmers in Revolutionary Era North Carolina, *NCHR* 73, no. 1 (January 1996): 56-82.

⁷⁹ Baron de Montesquieu, *The Spirit of the Laws*, ed. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (Cambridge: Cambridge University Press, 1989), 194.

unworthy Americans [who]...have taken part with our oppressors.” The “most dangerous among them,” Congress suggested, should be “kept in safe custody.” At the same time, Congress reminded the committees to exercise restraint, in order that “no page in the annals of America be stained by a recital of any action which justice or Christianity may condemn.”⁸⁰ This act, published throughout the colonies, in many ways described a *fait accompli*—committees in North Carolina had already resolved to disarm “all who have not subscribed the articles of association.” The failure to subscribe demonstrated that these people were “enemies to the liberties of America,” if not outright traitors.⁸¹

In North Carolina, revolutionary authorities first established a definition for treason in an ordinance issued by the Halifax Convention in December of 1776. The new General Assembly expanded and formalized it in the first set of laws passed by the new General Assembly four months later. The Assembly decreed that

...if any Person or Persons belonging to, or residing within this State, and under the Protection of its Laws, shall take a Commission or Commissions from the King of Great Britain, or any under his Authority, or other the Enemies of this State, or the United States of America; or shall levy War against this State, or the Government thereof; or knowingly and willingly shall aid or assist any Enemies at open War against this State, or the United States of America, by joining their Armies, or by inlisting, or procuring or persuading others to inlist for that Purpose, or by furnishing such Enemies with Arms, Ammunition, Provision, or any other Article for their Aid or Comfort; or shall form, or be in any way concerned in forming any Combination, Plot, or Conspiracy, for betraying this State, or the United States of America, into the Hands or Power of any foreign Enemy; or shall give or send any Intelligence to the Enemies of this State for that Purpose.

⁸⁰ Note that this was established well before independence, and was intended to guide committees in dealing with the knotty problem of prosecuting Loyalists for a crime against a state that did not legally exist. “Tory Act,” published January 2, 1776.

⁸¹ *Virginia Gazette*, 15 Sept. 1775.

The punishment for those convicted of treason was death (by hanging) without benefit of clergy. Additionally, the “Traitor’s Estate” was confiscated by the State, with a portion allocated to the convicted man’s family at the discretion of the judges.⁸² The Assembly defined the lesser charge of misprision of treason fairly broadly, including public criticism of the revolutionary cause:

[Anyone who] shall attempt to convey Intelligence to the Enemies of this State or of the United States; or shall publicly and deliberately speak or write against our public Defence; or shall maliciously and advisedly endeavour to excite the People to resist the Government of this State, or persuade them to return to a Dependence on the Crown of Great-Britain; or shall knowingly spread false and dispiriting News, or maliciously and advisedly terrify and discourage the People from inlisting into the Service of the State; or shall stir up or excite Tumults, Disorders or Insurrections in the State; or dispose the People to favour the Enemy, or oppose and endeavour to prevent the Measures carrying on in Support of the Freedom and Independence of the said United States...⁸³

North Carolina’s Whig leadership saw the importance of ensuring procedural protections for accused traitors, a step seen as essential to maintaining the legitimacy of the new state. Speaking to a grand jury in Salisbury, lawyer Waightstill Avery reminded them that “a Traitor is intitled to Tryal,” and that if the “Enemies of Good Government will continue their Opposition, remember those Laws now established and by the Law let them stand or fall.” Recognizing even as early as 1777 that the overeagerness of Whig

⁸² *SRNC* 24:10.

⁸³ *Ibid.*

partisans and officials to confiscate Loyalist property could have a deleterious effect on the cause, he warned the jurymen that theirs was an important duty:

If by Crimes committed they forfeit their Estates; to the Public they are forfeit and not for private plunder....Indeed these [offenses] are calculated to have a most mischievous Tendency, and ought to receive a very Severe Reprehension and be discountenanced and [?] to every Officer and every good Man who hath Influence to do it....We must remember that in establishing Law against Criminals, the Designs of Government are to Secure the peace and safety of the Community, the Reformation of the Parties and the Protection of all men not the wanton Destruction of any—Felons and Traitors not in arms are intitled to the Protection of the Law until they are outlawed.

Avery spoke with an eye toward the pragmatic reconciliation that will be discussed in the following chapter. He also understood that Whig excesses were a threat to state legitimacy. As Avery observed, with the courts no longer in session, “Many Acts of lawless Violence have been committed in this State by our Friends as well as our Foes.”⁸⁴ Despite the restrained approach to prosecuting treason, by the late 1770s, North Carolina’s superior courts were awash with allegations. James Iredell, attorney for the state, described the spate of criminal actions against alleged traitors at the Salisbury district court in a 1779 letter to his wife:

We were engaged from morning to night. Upwards of eighty Persons, I believe, were indicted, and mostly for capital crimes, among which the greatest number were for high Treason. Notwithstanding our greatest diligence no more than ten could be tried, every one of whom was convicted and condemned. Four the Jury recommended to mercy and probably more may be pardoned, several being young Men who possibly were artfully seduced.⁸⁵

⁸⁴ Waightstill Avery, Speech to the Grand Jury at Salisbury, March 1777, North Carolina Papers 1768-1783, Draper Manuscripts, NCA.

⁸⁵ James Iredell to Hannah Iredell, October 1, 1779, *Iredell Papers* 2:145.

The indictments overwhelmed the district's criminal justice system, and the county court ordered the sheriff to call out the militia to "guard the Gaol to prevent the escape of many Prisoners there confined for Treason and other offences against the Government of this State." As Iredell pointed out, he was only able to secure convictions on a handful of indictments. His account thus points to contradictory phenomena in the Piedmont: A great many people were accused of treason, but relatively few were actually convicted in the courts. This was, in part, because treason, by design, was very difficult to prove. But Avery's speech to the grand jury illustrates that even at this early stage of the Revolution in the backcountry, juries drawn primarily from local elites may have acted paternalistically or even strategically in their measured approach to treason cases. They served as a buffer against the popular rage and personal animus that may have lay behind many treason accusations, dependent as they were on denunciation by the alleged traitor's neighbors. In this sense, the courts took a measured approach to trying treason cases—they sought to dramatize and ultimately eliminate what they saw as a legitimate threat, not engage in judicial retribution.

Still, in prosecuting these cases, the courts carried out what revolutionaries saw as a crucial function. Defining and punishing—or forbearing from punishing—treason was viewed as a virtual *sine qua non* for an independent state. Massachusetts politician Elbridge Gerry, for example, observed that the June 24 resolves of the Second Continental Congress recommending that the colonies pass treason and counterfeiting laws showed that the Congress was "in a fair way to a speedy declaration of

independency.”⁸⁶ Prosecuting treason also generally depended on the conviction, held by British leaders amid the outbreak of hostilities in Massachusetts, that disloyalty was the result of “infatuated multitudes” led by “Incendiaries and Traitors.”⁸⁷ According to this line of thinking, ordinary people were essentially politically inert, awaiting political direction (i.e., to be “artfully seduced,” by demagogic leaders. It also suggested that the revolution might be ended in a fell swoop by severing its head, a conceit which temporarily guided British responses to the rebellion—they sought to divide the movement by offering amnesty to all but its leaders, a tactic also employed by Tryon in response to the Regulator movement.⁸⁸ Whigs in the North Carolina Piedmont evinced similar assumptions in their actions. In short, prosecuting treason, with all the complexities it entailed, in the early years of the war was fundamental to attempts to consolidate Whig power in a region leaders knew was crucial to the success or failure of the Revolution.

This posed a dilemma for North Carolina. On the one hand, the new revolutionary state sought to enforce and exert its power—and prosecute a war—in no small part through the implementation of criminal justice. The state prosecuted accused traitors, shut down counterfeiters, and imposed loyalty oaths on individuals in the Piedmont

⁸⁶ Quoted in Bradley Chapin, *American Law and Treason: Revolutionary and Early National Origins* (Seattle: University of Washington Press, 1964), 37.

⁸⁷ Thomas Gage, Proclamation of Amnesty, June 12 1775, in *Boisterous Sea of Liberty: A Documentary History of America from Discovery Through the Civil War*, ed. David Brion Davis, Steven Mintz (New York: Oxford University Press, 1999), 175.

⁸⁸ Chapin, *American Law of Treason*, 29.

through the courts. At the same time, though, imposing justice meant simply restoring order to a region torn apart by civil war. The administration of criminal justice thus fulfilled a dual role from the perspective of the state. The state promoted revolution by prosecuting its opponents--both perceived and actual. In this way the state sought to achieve consensus and promote, at times mandate, active participation in this republican endeavor.

Against this backdrop, one of the war's most significant Loyalist risings occurred in the region. Historian Jeffrey Crow has described a "smoldering resentment that occasionally flared into violence," inchoate and sporadic, especially in the early days of the Revolution in the North Carolina backcountry. This anger eventually "hardened into loyalism with a fury that astonished leaders on both sides of the conflict."⁸⁹ It is really impossible to do anything more than speculate on the percentage of the population of North Carolina—or most other places in British North America—who held Loyalist sympathies. Indeed, "Loyalist sympathies" is perhaps not even a useful concept, as many individuals in the backcountry went back and forth between the revolutionary cause, loyalism, and neutrality based on shifting circumstances. As one recent historian has written about Loyalists in Long Island, New York, the [political] "behavior of those living in rural areas...was often dictated by wartime exigencies and how they engaged

⁸⁹ Crow, "Liberty Men and Loyalists," 126.

with local institutions; their lived reality of the American Revolution affected their actions more than their ideological beliefs did.”⁹⁰

As I have argued in Chapter Two, interactions with inequalities and injustices in the Piedmont’s criminal justice system contributed to the outbreak of the Regulator movement. In similar ways, the state’s institutions for policing the countryside during wartime, tasked with enforcing onerous wartime measures, were deeply resented by many in the backcountry. The full force of popular anger would not become evident until Cornwallis’s invasion in 1780, and the brutal civil conflict that followed will be the subject of Chapter Four. Having examined the difficulties surrounding the loyalty oath, judicial confiscation, and prosecutions for treason in the Piedmont, it is worth looking at two other policies that alienated and angered many in the region, making them criminals and ultimately enemies of the state. The first was impressment, or “seizing private property for public use,” and the second was conscription, or the military draft. As one historian has observed, opposition to these wartime measures “produced widespread disorders and resentment” against the revolutionary government.⁹¹

Impressment was part of a broader effort to meet the demands of war. North Carolina’s General Assembly sought to encourage iron and lead mines, forges, and other essential war industries. But the new state, founded upon a very slippery financial footing, was consistently unable to meet the demands on resources imposed by the war.

⁹⁰ Christopher F. Minty, “‘Of One Hart and One Mind’: Local Institutions and Allegiance During the American Revolution,” *Early American Studies* 15, vol. 1 (Winter 2017): 104.

⁹¹ John R. Maass, “‘Too Grievous for a People to Bear’: Impressment and Conscription in Revolutionary North Carolina,” *Journal of Military History* 73 (October 2009), 1115.

While most North Carolinians probably disapproved of hoarding, which they associated with the rampant wartime inflation in the colony, they also chafed at seeing their crops and livestock commandeered by the state. Initially, this expedient was fairly uncommon, but as the exigencies of war came more directly to North Carolina, the demand for such staples as pork and salt became even more pronounced, and Rowan County farmers complained of impressment agents sent out of Salisbury to seize provisions “without giving any vouchers; Cattle, Sheep, and Hogs killed in the Woods without the knowledge of the owners; Horses taken out of pasture & Stables in a clandestine manner...without leaving any certificate of the deed.”⁹² While these agents operated under orders from the Assembly, they frequently abused this authority, taking it as a license to indiscriminately plunder the countryside. In Hillsborough, for example, a group of men claiming to act under military authority forcibly stole money, liquor, saddles, and a “fat hog,” abusing and threatening to kill people who protested.⁹³

It is often difficult to discern from the records whether these clearly unscrupulous men actually acted in a military capacity, or if they were, essentially, bandits acting outside civil and military law. This was in fact the problem confronted by revolutionary leaders, both civilian and military—the victims of these incursions also could not distinguish between foragers attempting to requisition much-needed supplies and greedy raiders acting without legal authority. Again, the Moravians recorded in minute detail the substance of their interactions with revolutionaries who saw this pacifist sect as an

⁹² Quoted in Maass, “Too Grievous for a People to Bear,” 1098.

⁹³ Depositions of Mary Troxler et al., 1781, HDSC Criminal Action Papers, NCA.

imperium in imperio, untrustworthy if not downright subversive. As their leaders conferred with a contingent from Salisbury attempting to secure their signatures on a loyalty oath, the Moravians noticed that “the common soldiers looked here and there for something to take.”⁹⁴ Suspicious that the Moravians might profit from trading in war materiel, the Committee also took advantage of Salisbury’s location along trading routes from Charleston to confiscate large packages headed for the Moravian settlements. Moravian leaders who wished to receive these shipments had to first open them in the presence of militia representatives.⁹⁵ The Moravians eschewed fighting, but unsurprisingly, some people resisted with force. One officer rounding up horses in the Halifax District reported being “struck...with a whip” by an angry farmer unwilling to part with his valuable livestock.⁹⁶ By law, confiscating officers were required to show certificates, and, by the end of the war, vouchers for impressing their property, but this requirement was often ignored. For many in the region, including people otherwise inclined to support the revolutionary cause, impressment “amounted to outright theft.”⁹⁷

If impressment was viewed as particularly burdensome, conscription was intolerable for many North Carolinians who were ambivalent about the Revolution in the first place. While service in the militia was a well-established tradition in the Anglo-American world, it became particularly onerous with the outbreak of hostilities for the

⁹⁴ Salem Diary, February 15 1776, in *MR* 3: 1050-1051.

⁹⁵ Salem Diary, March 17 1776, in *MR* 3: 1056-1057.

⁹⁶ *Ibid*, 1101.

⁹⁷ Maass, “Too Grievous for a People to Bear,” 1094.

obvious reason that military service now carried the risk of fighting the British or the Cherokees. Backcountry settlers resisted militia service throughout the revolution, on grounds that ranged from the need to tend crops to simple anti-authoritarianism. The intractable Henry Daniel, mentioned earlier in this chapter for his refusal to sign the loyalty oath, told the Salisbury Superior Court that he would “Shoot the first officer that would offer to Command him and as many as would offer to Do it.”⁹⁸

Predictably, Rowan County residents and other backcountry men also resisted the Continental draft, which was conducted by filling a quota from militia companies. In one particularly blatant example of resistance, a contingent of rebellious militiamen responded to their captain’s demand that they take the oath, and fill their quota, by huzzahing for King George, and refusing to submit to Whig officers. Rowan County, despite its early and vocal participation in the Revolution, was never able to fill its quota in the Continental line—a situation that developed into a major problem with Cornwallis’s invasion, since the Assembly hoped to reinforce Nathaniel Greene’s forces primarily with men drafted from the Salisbury District. Men in the district, as elsewhere in North Carolina, found a number of ways to express their deep “unwillingness...to perform military service.”⁹⁹ Many resisted by attempting to elect Tory officers, choosing men who were exempt from the draft, or by simply running away.¹⁰⁰

⁹⁸ Crow, “Liberty Men and Loyalists,” 136, 149.

⁹⁹ Maass, “Too Grievous for a People to Bear,” 1109-1110.

¹⁰⁰ Crow, “Liberty Men and Loyalists,” 155; Lee, *Crowds and Soldiers*, 169.

Refusing to submit to the draft was a criminal act, one which led to another problem for courts increasingly despairing of their ability to maintain civil order in the midst of the Revolution. Like horse thieves, draft avoiders could evade prosecution—and ultimately induction into the Continental Army—by fleeing to the countryside. By 1780, so many of these fugitives fled to the outskirts of Rowan, Wilkes, and Surry counties that they became a major threat to those who lived there. Moravians in Salem reported that fear of conscription led “many to hide in the woods, and as they have nothing on which to live they resort to highway robbery, which is bringing the country into a pitiable condition.” Perhaps acquiescing to the reality that the state was unable to—or uninterested in—protecting their property, Salem’s leaders took matters into their own hands, constructing an additional building near the town tavern to accommodate indigent draft evaders who lacked the money to pay for lodging.¹⁰¹

While recognizing the dire need for soldiers to fill the Continental line, some politicians sympathized with the resisters. Noting the effects of the draft on ordinary people in 1778, William Hooper, a delegate to the Continental Congress, described “fields robbed of their husbandmen, our Towns of their Manufacturers—Husbands torn from their wives and Children who sought their daily bread from their personal labors and industry.”¹⁰² Similarly, Salisbury petitioners made the familiar argument late in the war that draft officials conscripted only the “poor and ignorant,” leaving their families to “suffer with hunger and other distresses.” As one historian observes, this practice “made

¹⁰¹ Salem Diary, *Moravian Records* 4: 1668.

¹⁰² Quoted in Maass, “Too Grievous for a People to Bear,” 1111.

a mockery of liberty and republican government...[and] must have also weakened the support for and allegiance to the new state and its leaders.”¹⁰³ Moreover, the state’s persistent inability to enforce this law weakened its credibility.

Historian Wayne Lee has persuasively described these supposedly “peaceful” years in the Revolutionary backcountry as a time of “continuous pressure on the model of virtuous war aspired to by the Whigs.” Even as revolutionary leaders attempted to maintain legitimacy by honoring the conventions of war, they faced Loyalists who responded to conscription, loyalty oaths, confiscation, and other measures through what they understood as “legitimate retaliation,” which could take a number of forms.¹⁰⁴ Isolated pockets of diehard Loyalism existed, such as a group of Tories in Guilford County who held a public meeting vowing “damnation to all that would not join them,” but resistance in the backcountry prior to 1780 was situational and locally specific, a response to the privations of war or the demands of the Revolutionary government.¹⁰⁵

This chapter has emphasized the dialectic between revolutionary ardor and restraint that characterized the proceedings of the revolutionary committees and courts in the Piedmont. Yet this institutional focus somewhat obscures the brutal reality of the Revolution as experienced by many in the region. William Gipson, a Whig soldier from

¹⁰³ Ibid, 1114.

¹⁰⁴ Ibid, 172.

¹⁰⁵ For example, in 1777 one group of backcountry residents marched en masse to Cross Creek (modern Fayetteville) to demand salt from the government—supplies of this vital commodity had been taken for the Continental Army. The crowd received salt, and returned home without a fight, though governor Richard Caswell called out the area militia to stop them, fearing they might continue to Wilmington. Ekirch, “Whig Authority”, 106-7.

Rowan County, described a grisly incident that transpired in 1779—before Cornwallis’s invasion—after his unit captured two loyalist partisans, a man named Campbell and the “notorious Hugh McPherson,” in Guilford County. The two unfortunate Tories were taken to the courthouse in Guilford, where the officers of Gipson’s regiment held a court martial, finding them guilty. McPherson, Gipson remembered, was “condemned and shot in [Gipson’s] presence.” The officers spared Campbell’s life, but only after subjecting him to an elaborate form of torture, as Gipson described it:

Campbell was...spicketed, that is, he was placed with one foot upon a sharp pin drove in a block, and was turned round by one Thomas Archer...until the pin run through his foot. Then he was turned loose.

Reflecting on the incident many years later, Gipson allowed that this punishment might seem cruel to “those who never witnessed the unrelenting cruelties of the Tories of that day.” But he remembered that, at the time, he “viewed the punishment of these men with no little satisfaction.” He had a reason: While plundering in Rowan County, Campbell and McPherson had tied up and whipped Gipson’s mother before burning her home to the ground.¹⁰⁶ This kind of retributive justice, brutal in its execution, would come to characterize the conflict in the backcountry. Indeed, as civil society collapsed, the law of

¹⁰⁶ John C. Dann, ed., *The Revolution Remembered: Eyewitness Account of the War for Independence* (Chicago: University of Chicago Press, 1980), 187-189. Gipson’s account, like others in this volume, was taken from his pension application. In these applications, veterans recounted their war experiences, and were required by the federal Pension Act of 1832 to mention the time and place they served, their units and officers, and any battles or significant skirmishes they participated in. Most of these accounts, including Gipson’s, were sworn affidavits recorded by court officials in the veteran’s home county. Gipson’s statement was recorded in 1832, when he successfully applied for a pension. While his advanced age (79) and the many years that separated him from the incidents described must be taken into account, the events he remembered were consistent with other descriptions of the war in the backcountry. *Ibid.*, xv-xxii.

retribution, known as *lex talonis*, would be the only source of criminal justice available to people in the region, whatever their political sympathies.

The wave of Tory discontent that hit the region in 1780 was fueled in part by the repressive measures of a revolutionary state intent on disciplining a diverse of population for a potentially very long struggle. When the dynamics of power changed in 1780 with the invasion of Cornwallis's army, Loyalists came out in droves, and their anger demonstrates that, even if most were not strongly ideological, neither can they be dismissed as cynical opportunists. With Whig leaders driven from centers of power, the Piedmont descended into anarchy and a brutal civil conflict. But long before this, many people in the region resisted the impositions of the revolutionary state. Juries refused to convict people accused of treason. Militia units sought creative ways to avoid the draft, and groups of draft-dodgers skulked around the edges of Piedmont settlements. Still others flatly refused requisitions of supplies, risking violence or arrest in so doing. Efforts to enforce the Revolution by criminalizing those who refused to conform to its dictates and acquiesce to its demands met with opposition and anger that emerged with a vengeance—quite literally—in 1780-81.

CHAPTER V

“OFFENCES OCCASIONED BY THE LATE WAR”: CRIME, CONFLICT, AND RECONCILIATION IN THE PIEDMONT, 1781-1785

More than fifty years after American independence, Moses Hall, a veteran of the Revolutionary War in North Carolina, recalled an incident that he said “made a lasting impression on my mind.” After defeating a Loyalist militia under local leader John Pyle in a battle near the Haw River in Orange County, Hall, then a young man, was invited by some of his fellow soldiers to view a large group of Loyalist prisoners taken during the battle and assembled under guard in a clearing. The young soldier watched as his comrades, taunting the prisoners, deliberated for a moment. With no warning, the men surrounded the Loyalists, shouting “Remember Buford!” In short order, Hall recalled, the prisoners “were...hewed to pieces with broadswords.” In front of the other men, Hall, who claimed he did not participate in the massacre, remembered, “I bore the scene without any emotion.” But upon reflection, the young man “felt such horror as I never did before nor have since.” He returned to his quarters and, “throwing myself upon my blanket...contemplated the cruelties of war until overcome and unmanned by a distressing gloom.” The following day, however, Hall encountered another horrific spectacle—a mortally wounded civilian boy lying beside a dirt path, bayoneted in the stomach by British soldiers who suspected him of espionage. The sight of the dying boy, Hall

remembered, “relieved me of my distressful feelings for the slaughter of the Tories, and I desired nothing so much as the opportunity of participating in their destruction.”¹

This grim wartime vignette is, on the one hand, a poignant study in the effects of war on impressionable young men, though Hall was already, at age twenty, a veteran of several bloody engagements in the Revolution. But this firsthand account also illustrates the brutality of the backcountry war in the 1780s, a conflict which raged for almost two years. During this dark period, the North Carolina backcountry witnessed, as Continental Army General Nathanael Greene wrote, a brutal partisan war in which “Whigs and Torrys...pursue each other with as much relentless fury as beasts of prey.”² Civil government completely collapsed, and the simmering divisions in the region rapidly erupted into violent anarchy. What transpired in the two years following Cornwallis’s invasion of the Piedmont was less a civil war in which two sides vied for control of the reins of government than a series of bushwhacking, bloodfeuds, and partisan fighting that resulted in near total anarchy. While courts met intermittently during this period, the justice administered amid the violence and disorder was primarily retributive in nature. This chapter will trace the contours of this conflict, continuing to emphasize the ways in

¹ Moses Hall, quoted in *The Revolution Remembered*, Dann, ed., 202-203. Abraham Buford was the commanding officer of a force of Continental soldiers defeated by British troops under the command of Banastre Tarleton at the Battle of the Waxhaws in South Carolina near the North Carolina Border. Tarleton’s men killed over one hundred Continentals, including many after Buford’s force raised a white flag. Though Buford himself survived the incident, and the circumstances surrounding the killing were disputed, “Remember Buford” became a byword for retributive justice among Whig partisans and Continental soldiers. As this incident illustrates, it legitimized, in the minds of some soldiers, the indiscriminate slaughter of prisoners. Pancake, *This Destructive War*, 70-71.

² Nathanael Greene to Samuel Huntington, December 28, 1780, Richard K. Showman, ed., *The Papers of Nathanael Greene*, vol. 7 (Chapel Hill: University of North Carolina Press, 1991) 7:9.

which the revolutionary state attempted to simultaneously re-establish order and advance the revolution in the midst of chaos.

The violence and endemic criminality in the Piedmont in the final years of the war raise another question, one that is just beginning to draw attention from historians: How could North Carolinians in the Piedmont rebuild their communities and recover from the carnage of the latter years of the Revolution? Specifically, how, in a region where a very significant percentage of the population had, at least at some point, sided with the British, was reconciliation between Loyalists and Whigs possible? Historian Jane Kamensky has recently described the process of post-Revolutionary healing as the “suturing together of [the] battered body politic,” and this task was as daunting in the North Carolina backcountry as anywhere in revolutionary America.³ Given the rhetorical, legal, and political work done in demonizing and marginalizing Tories as criminal “others,” redeeming these people as citizens of the state and as members of Piedmont communities was a daunting challenge. Recent events in the region offered mixed precedents for this process. In the wake of the Regulator movement, William Tryon visited severe reprisals on Orange County Regulators and their sympathizers, though he, and especially his successor Josiah Martin, also offered broad pardons to participants in the movement. Still, many Regulators remained alienated from Revolutionary society, as evidenced by their turnout in substantial numbers as Loyalists in the early years of the Revolution. Indeed, the fury of the war in the Piedmont in many ways illustrates how incomplete the

³ Jane Kamensky, “Red, White, Black and Blue,” review in *New York Times*, May 21, 2017, 27.

process of reconciliation was in the aftermath of the Regulation. Demonstrating the power of the state by crushing insurgents and curbing the excesses of partisan fighters often seemed mutually exclusive imperatives for the new state.

Backcountry disorder meant that the region's courts met only intermittently from 1780 to 1783. The degree to which the state's legal system in the region was weakened and compromised was a major political and social issue confronting the revolutionary state. This problem vexed Whig leaders and it remains a daunting challenge for historians of the North Carolina backcountry, who are deprived of the conventional sources used to register criminality and disorder in the region. The "fog of war" that characterized events in the region in the later years of the Revolution continues to obscure our understanding of the period, and we must look beyond formal legal structures to discern the ways that crime and justice existed in the Piedmont. Indeed, an exclusive focus on formal court records suggests that the revolutionaries took great care to see that justice was fairly administered. This is true, to a point. But men who lived through this period—and almost all surviving accounts are from men—recorded a different story in their petitions, depositions, and letters. These records describe, sometimes in harrowing detail, the violence and mayhem endured by families in the Piedmont in the midst of a full-blown civil war. Beyond the laconic accounts of prosecutions and imprisonments are eloquent statements of fear, hatred, and, above all, confusion. These fears were manifested in a number of ways, as frightened civilians petitioned their government for protection, angry men vowed to take life to avenge the deaths of friends or family, and anxious "disaffected" citizens, criminalized by their wartime decisions, desperately tried to regain

their status in their communities and the new state that emerged amid the bloodshed. Determining whether these hatreds and fears were founded in reality is less relevant to this study than ascertaining the extent to which these emotions guided behaviors. But beyond this, a study of the period reveals a familiar theme: the complexities encountered by a revolutionary government which sought to promote order in the region. On the one hand, the “othering” of Loyalists, emphasizing the brutality and lawlessness of their actions, was an important means of promoting the Revolution in North Carolina, an essential part of rallying support for the “common cause.”⁴ Loyalists, in fact, characterized “Liberty Men” in the same way, and for similar reasons. But as the war came to an end, and the process of healing began, the Revolution had created a criminal class that had to be reckoned with. For to be a Loyalist was to be a traitor, and no power was more essential to sovereignty than that of defining, prosecuting, and punishing traitors.

But not all traitors proved worthy of punishment. In treason and other crimes of war, we find a complex relationship between the ideals of revolution and the realities of civil war and anarchy. The violence and criminality of the Revolution in the backcountry did not operate independently of the politics of the period that followed, they informed it, even shaped it. As historian Allan Kulikoff has written, historians who “blot out the sounds, sights, and smell of war that drifted just outside the homes of the pamphlet

⁴ The marginalization of Loyalists by Whigs is recounted in Parkinson, *The Common Cause: Creating Race and Nation in the American Revolution*.

writers, newspaper editors, and political leaders” of the period miss this crucial point.⁵

The courts, too, had to respond to the realities of war. Through their decisions, they performed a sort of dual role, at once mediating popular bloodlust and personal grievances and defining the bounds of citizenship through the crucial process of readmitting some Loyalists to society. In the process, they judged which accused traitors warranted punishment and which could be reconciled and, though the term did not exist in eighteenth-century legal parlance, rehabilitated. The legislature too, was central to the process of reconciliation, which became a major source of contention in North Carolina’s post-Revolutionary politics. The terms of this reconciliation were hotly contested among North Carolina’s politicians, but the experience of many accused traitors in the criminal courts in the aftermath of the war suggests that the courts—judges and juries—took their roles as arbiters of reconciliation seriously. The courts adhered to law and precedent as they waded through countless treason cases of varying levels of legitimacy. The fledgling state’s legislature and governors Thomas Burke and Alexander Martin thoughtfully weighed and at times vigorously debated petitions for pardons that, at least on occasion, reflected sincere penitence and remorse on the part of convicted traitors. Yet they also pursued, over the objections of eastern elites, a rigorous policy of property confiscation, punishment for those who had abandoned their Patriot neighbors. Both of these approaches were elements of a strategy calculated to promote sovereignty and order in the unruly backcountry.

⁵Allan Kulikoff, “Revolutionary Violence and the Origins of American Democracy,” *The Journal of the Historical Society* 2, no. 2 (Spring 2002): 231.

This process took place throughout the state—there were hotbeds of Loyalism in the coastal regions as well—but in the Piedmont, where contemporaries thought disaffection with the Revolutionary state ran hottest, and the reach of state power had long been contested, the stakes were particularly high. At the same time, a study of the criminalization of Tories in North Carolina reveals that Whig leaders defined the contours of the new state even as the war was ongoing. If revolutionary committees enforced the revolution in its incipient phases, juries, courts-martial, and the state legislature determined who might be eligible for forgiveness and citizenship as the war wound to a bitter end. Men in the Piedmont elected representatives who pursued punitive measures against some Tories, in part because they hoped to benefit from the confiscation of their lands. But they also, in some cases, showed a willingness to forgive some Loyalists who faced extenuating circumstances and who had demonstrated sufficient remorse for their crimes. One recent historian has emphasized the expansiveness of South Carolina’s legislature—and, by comparison, the limited nature of North Carolina’s—in granting clemency to Loyalists soon after the Revolution. Where South Carolina eventually enacted an omnibus law that forgave all but a handful of Tories, North Carolina, largely due to the influence of the backcountry, chose a more rigorous, less forgiving approach than its southern neighbor, one that emphasized the criminality of “disaffected people.”⁶

⁶ Rebecca Brannon, *From Revolution to Reunion: The Reintegration of the South Carolina Loyalists* (Columbia: University of South Carolina Press, 2016).

The violence and disorder in the North Carolina backcountry have long attracted the interest of historians. Some students of the Revolution in the region have seen its origins in class grievances that dated back to its initial settlement in the mid-eighteenth century. The breakdown in the “hierarchical structure” of the North Carolina backcountry led to an “erosion of deference” that portended disorder, as ordinary people dispensed justice as they saw fit. These historians have convincingly argued that Loyalist violence was a response to the indignities and depredations they faced at the hands of Whig partisans. Still others have stressed the role of ideology, in interpretations that focus on the limits of acceptable violence and the importance of maintaining the legitimacy of the Revolutionary cause.⁷ This chapter draws on each of these approaches, emphasizing the role of criminality in the escalation and the resolution of the conflict. Above all, this approach illuminates what the account at the beginning of this chapter hints at: the horror of the conflict in the Piedmont, which witnessed an escalating cycle of atrocities on a scale that nobody could have imagined before the war. Accounting for the carnage hints at the difficulty of reconciliation, a theme very recently taken up by historians interested in the process of community, state, and nation building in the aftermath of the Revolution.⁸ A focus on crime and disorder in the Piedmont during the final three years of the Revolutionary War also trains our attention on the lived experiences of people in

⁷ Crow, “Liberty Men and Loyalists”; Jim Piccuch, *Three Peoples, One King: Loyalists, Indians, and Slaves in the Revolutionary South, 1775-1782* (Columbia: University of South Carolina Press, 2008); Lee, *Crowds and Soldiers in Revolutionary North Carolina*; Ekirch, “Whig Authority and Public Order in Backcountry North Carolina, 1776-1783.”

⁸ See, for example, Brannon, *From Revolution to Reunion*; Parkinson, *The Common Cause*.

the region. It emphasizes the terror and confusion that confronted, and the difficult chances they had to make. Moreover, it sheds light on the process of state (and therefore nation) building, a process that involved violent and expropriative measures against the “disaffected,” but simultaneously left room for their rehabilitation and reintegration.

The “Tory War,” 1781-1783

The catalyst for the Tory rising was the British invasion of the backcountry, or at least the widespread anticipation of their arrival, in late 1780. This invasion was to be the culmination of the so-called “Southern strategy” formulated by Lord George Germain, British Secretary of State for the colonies. As noted in the previous chapter, the expectation that Loyalists in the Carolinas would rally in support of British forces contributed in no small measure to Germain’s plans. This somewhat sanguine appraisal was informed in no small part by deposed royal governor Josiah Martin, who remained convinced even after his forced departure from the colony that Loyalists were a sort of silent majority in the Piedmont. After capturing Charles Town on the South Carolina coast, British forces under General Lord Charles Cornwallis rapidly made their way into the backcountry, and early signs from this campaign suggested that British war planners were correct in their predictions of Loyalist mobilization. One historian has identified more than fifteen clashes between Whig and Loyalist partisans in South Carolina within six weeks of Cornwallis’s campaign into the interior. After a decisive victory in South Carolina at Camden in August of 1780, his forces made their way across the North Carolina border to Charlotte. North Carolina’s Loyalists, too, were emboldened by the prospect of British troops in the Piedmont. Despite living more than one hundred miles

from the South Carolina border, Moravians remembered that, in anticipation of Cornwallis's arrival, "in our neighborhood...more than a thousand Tories gathered, who did many deeds of violence."⁹ While Cornwallis on the one hand looked forward to securing the support of Loyalist partisans, like his Whig counterparts, he also hoped to restrain the excesses of the militia. As he entered North Carolina, he unsuccessfully sent emissaries to "the leading Persons amongst our friends [in North Carolina], recommending that they should attend to their harvest, prepare provisions, & remain quiet until the King's Troops were ready to enter the Province."¹⁰ Many local Loyalists failed to heed the British general's entreaties, and paid a heavy price in the fall of 1780. In short order, two bodies of Loyalist troops, including many North Carolina Loyalists, were destroyed by Whig forces—one at Ramsour's Mill (in modern-day Lincolnton) and the other at King's Mountain, near the North Carolina-South Carolina border. The latter engagement, which concluded with Whig fighters shooting down their Tory enemies in cold blood as they tried to surrender, set the tone for the conflict in the backcountry, one characterized by brutal violence based on the principle of retributive justice.¹¹

Cornwallis made his main thrust into the Piedmont in early 1781, pursuing the Continental Army commanded by Nathanael Greene throughout the region before meeting in a major battle at Guilford Court House, in modern Greensboro. After winning a Pyrrhic victory there, Cornwallis took his wounded army to Wilmington. There they

⁹ Pancake, *This Destructive War*, 71; Offering of Praise and Thanksgiving, 1783, *MR* 4:1880.

¹⁰ Cornwallis, quoted in Pancake, *This Destructive War*, 95.

¹¹ *Ibid*, 116-121.

rested and resupplied before turning northward for Virginia and their ultimate defeat and surrender on the Yorktown Peninsula in October of 1781. The British presence in inland North Carolina thus ended. But its effects lingered for more than two years. The invasion created a power vacuum in the Piedmont, as courts closed, state officials and prominent Whigs went into hiding, and Tories emerged from the countryside bent on avenging the many abuses they had suffered under the Revolutionary government, and, perhaps more important, at the hands of their Whig neighbors.

Throughout this conflict, court records offer only sparse records of the violence that engulfed the region, but other contemporary sources speak at times chillingly of a military and a civil conflict that acknowledged few bounds, and that frequently set neighbor against neighbor. Contemporary sources describe a region that, by late 1781, had descended into almost total disorder. Historian Wayne E. Lee has argued that, during this “War of the Militias” in the backcountry, the rules and cultural expectations of war did not so much collapse as assume a different form, or “paradigm of war,” namely a “war of retaliation.” But it would have been difficult for contemporaries to discern these broad changes in their ideologies of acceptable violence. Both sides came to accept and practice nearly limitless violence against the enemy, with disastrous consequences for thousands of Piedmont families.¹² From the perspective of crime, the conflict generated a nearly endless stream of assaults, murders, house burnings, and stolen property. It also created a new class of criminal—the “Tory,” one who, by definition turned his back on

¹² Lee, *Crowds and Soldiers*, 177. The phrase “War of Militias” is Lee’s.

his neighbors, rejecting membership in his community. But throughout the Piedmont, the opposite was also true—the “Tory” arose in response to the crimes of so-called “Liberty Men.” But in the end, only the Tory was inimical to the Revolutionary state. These disaffected North Carolinians were by law traitors.

In a July 1781 report to his council, governor Thomas Burke outlined a grim picture of the state of affairs in revolutionary North Carolina. Though Cornwallis’s army had recently departed the state, leaving only a small British garrison at Wilmington, Burke wrote, matters remained dire:

The Country is every where unprepared for defence, without arms, without discipline, without arrangements; even the Habits of civil order and obedience of Laws changed into a licentious contempt of authority and a disorderly indulgence of violent propensities; Industry is intermitted, agriculture much decayed, and commerce struggling feebly with almost insuperable difficulties.

Burke proceeded to recommend a series of military, civil, and economic proposals aimed at restoring order to the state. These included standard wartime measures like further training for the state’s militia, securing arms and munitions, and constructing fortified outposts throughout the backcountry. But he also proposed, to the unanimous approval of the Council, taking immediate measures to rebuild the state’s criminal justice system. Superior and county courts had to be reopened, and officials, including sheriffs and constables, had to “be enjoined to proceed on their respective duties with diligence and vigor on pain of being punished agreeably to law.” Finally, Burke recommended, justices of the peace should take account of their districts, taking careful notice of all “new settlers...sojourners, and all persons other than the Inhabitants. The governor proposed

stationing troops “wherever any idle persons shall be harboured, [or] outlying or disorderly persons shall be found, or wherever any violences or disorders shall be committed if the offenders be not secured.” To further promote order, Burke proposed that all “disaffected persons” who would return to their homes should be eligible for pardon except those who had led armed bodies of Tories or had been guilty of “murder, of rapes or house burnings, and such as have committed offences not immediately connected with the War.”¹³

Burke’s plan for reestablishing order in the state, particularly in the backcountry, was typical of the Janus-faced policies enacted throughout the Revolution. The state allowed that some Tories might be allowed to rejoin North Carolina society. At the same time, it prioritized using the criminal justice system to sort out the worthy citizens of the state from those whose crimes were unforgivable. Justices of the peace were responsible for taking stock of newcomers to far-flung, but still tightly-knit, face-to-face communities in the backcountry, ferreting out “idle” or “disorderly” persons by calling out the militia. These measures were controversial, and Burke himself voiced concerns about the control the legislature and the executive would have over the special courts of oyer and terminer established by the General Assembly to try the backlog of treason cases left in the wake of Cornwallis’s invasion.¹⁴ Overall, the state’s approach to the Loyalist problem during the war itself was, as Burke told the Assembly, to “reclaim all that are reclaimable of our

¹³ Council Minutes, *SRNC* 19: 857-862.

¹⁴ *Ibid*, 863-864.

ill advised and deluded citizens, and expel the incorrigible by force of arms.”¹⁵ In part, this task fell to a criminal court system that operated only intermittently during the chaos of the early 1780s. The Hillsborough and Salisbury courts, as well as almost all of the county courts in the region, failed to convene on multiple occasions due to British occupation or turmoil in the countryside. In practice, then, backcountry disorder meant that militia, barely under state control, meted out justice largely as they saw fit, a situation that could not have been better calculated to aggravate the violence and chaos in the region.

Loyalist militia, having emerged with the invasion of the British, responded to Whig outrages with a fury that shocked onlookers. There is significant evidence that the antagonists exploited the violence employed by their enemies to propagandistic effect. When governor Alexander Martin reminded the General Assembly that the North Carolina countryside was “infested” with men engaged in the “most sanguinary and inhumane outrages,” he encouraged vigilance and support for the Whig cause by demonizing and criminalizing Loyalists.¹⁶ Still, even in private letters to each other, Whig officers expressed genuine outrage at the violence wrought by Loyalist partisans, especially against noncombatants. One officer described the “cruelty [Loyalists] have used by cutting and plundering the inhabitants.” He wrote that his fellow officers “would...almost shed tears to see the barbarity of them wherever they go.”¹⁷ Despite the

¹⁵ Burke, Address to General Assembly, *SRNC* 22:1036.

¹⁶ Martin to General Assembly, *SRNC* 16:9.

¹⁷ Joseph Rosser to Roger Griffith, February 28, 1782, *SRNC* 16:210.

fears evoked by such accounts, and the enthusiasm that motivated some Loyalists to take to the field in the fall of 1780, Piedmont Loyalists did not pour out of the countryside in support of Cornwallis's army in anything like the numbers the general had hoped. Moreover, British officers often found the intelligence Loyalists provided unreliable, and Loyalist households and farms were generally not forthcoming with supplies for the army. Once in Hillsborough, Cornwallis issued a proclamation inviting all loyal North Carolinians to rally to the King's standard, but he rallied few recruits. This was especially disappointing given that the town lay in the heart of Regulator country, regarded by British war planners as a hotbed of Loyalism given the widespread hostility to the eastern planter and lawyer class that comprised North Carolina's revolutionary leadership. Despite their reputed antipathy to the Whig government, even those Loyalists who had taken "a Thousand Oaths of Allegiance and Fidelity [to the Crown]...are waiting with the utmost impatience to break them all," according to one of Cornwallis's officers. When the redcoats entered Hillsborough in February of 1781, the officer noted bitterly, only "the Novelty of a Camp in the back Country...brought several People to Stare at us. With "their curiosity once satisfied," he wrote, they went home.¹⁸

How can British disappointment with backcountry Loyalists be reconciled with Whig reports that the North Carolina Piedmont was crawling with Tories? For one thing, many so-called "Loyalists" had little interest in serving under the banner of the British Army. These men often mobilized in response to specific offenses committed by men

¹⁸ Douglas Middlekauff, *The Glorious Cause: The American Revolution 1763-1789* (New York: Oxford University Press, 2005), 485; George C. Rogers, Jr., "Letters of Charles O'Hara to the Duke of Grafton," *South Carolina Historical Magazine* 65, vol. 3 (July 1964): 168-176.

affiliated (at least in their minds) with the Whig cause. Many of them fought for self-defense and retributive justice, not the Crown, launching raids against their enemies and returning to their homes without engaging in extended campaigns. Their own rhetoric in many cases was strongly inflected by intensely personal grievance and rage. At a meeting in Anson County held to recruit partisan Loyalists to fight in the western reaches of the state, Elias Brock looked forward to the day when he and his like-minded neighbors would “ride to our horses knees in Liberty Men’s Blood and Guts.” Another man, a victim of either official or unofficial confiscation, “hoped to be at the Scalping of the liberty men for taking his land from him.”¹⁹ These men, like many Loyalists in the region, were eager to fight not out of a sense of duty or friendly disposition to the King. As one historian of the conflict has observed, they wanted justice for previous affronts by men that they associated generally with the Whig cause, as well as the “wartime excesses of whig governance” in general. One of them, Charles Brock, singled out Whig officers Ned Hampton and John Gowin, swearing in front of his neighbors to “undertake to kill” the two men “for a breakfast spell.”²⁰

Other Loyalist leaders resorted to armed self-defense in the face of Whig lawlessness. Bandit gangs plagued the North Carolina backcountry, as they had even before the Revolution, as authorities struggled to establish even a modicum of civil government. The problems inherent in apprehending criminal bands who operated among friendly populations gave these men license to raid with impunity. In Burke County, for

¹⁹ Memorial of George Walker, SDSC Criminal Action Papers, 1780, NCA.

²⁰ Crow, “Liberty Men and Loyalists,” 129.

example, authorities confronted a criminal gang with professed Loyalist sympathies that “rob publicly all the friends of the common cause, and openly declare they will not injure the subjects of his Majesty.” These men, who apparently carried on the familiar, much-maligned crime of horse stealing, enjoyed “so many correspondents, friends and protection” in the surrounding area that authorities—the local militia—struggled to apprehend them. Even when criminals were captured, they often broke jail before facing trial, usually with the help of sympathetic locals. Typical was one Tory, a “most notorious horse thief and person guilty of treason” that escaped from the Salisbury jail, assisted, one officer averred, by “friends convenient.”²¹ The Moravians noted the “rising” of a band of horse thieves in their neighborhood, operating under the “pretext” that “they wish to support the cause of King George.” When mounted militiamen arrived from neighboring Guilford County to quell the disturbance, they “failed to find any Tories that were planning a rising.” These alleged horse thieves had melted into the countryside, where their professed Loyalist sensibilities and very likely their ties of community and kinship apparently won them crucial allies willing to give them shelter.²²

However sincere their ideological motives, these bands of marauding Loyalists posed a direct challenge to the authority of the state government, still in its infancy. In addition to initiating seemingly endless cycles of retribution and revenge, they also gave

²¹ Griffith Rutherford to Richard Caswell, June 28, 1779, *SRNC* 14:132-133. This incident occurred in 1779, before Cornwallis’s invasion. But Rutherford’s description of the situation in Burke County was typical of much of the North Carolina backcountry, particularly the western Piedmont, throughout the conflict.

²² Salem Congregation Diary, 1781, *MR* 4:1536.

pause to many in the backcountry who might otherwise have joined the war effort. As one officer asked, “Is it not exceedingly hard upon the good men in this County that they should be drafted and taken from a place where they are so much wanted? As it is with the greatest difficulty that we keep the Tories from plundering and murdering us even in our own houses.” With justification, men feared leaving their families at the mercy of “a set of Villians, who Dayley threatains their Destruction.”²³ The disorder of the 1780s left the roads of the region crawling with highwaymen and banditti, and “Liberty men” too, had little faith that legitimate authorities would protect their families.²⁴ Moreover, these depredations interrupted commerce, as well as military supply lines, in the region. The rutted roads connecting Hillsborough, the Moravian towns, Salisbury, and Charlotte were difficult and dangerous even under the best of circumstances. The swift-moving streams, red clay soils, and hilly terrain of the region made them potentially deadly for travelers, and fears that wagon trains would be waylaid by bandits was a constant fear made worse by the chaos of war. In short, many Loyalist sympathizers were “loyal” insofar as they held grievances against Whigs, either in government or in their communities. They, and for that matter their Patriot counterparts, had little interest in pursuing the war beyond their neighborhoods.

One historian who has emphasized the role of these “Revolutionary banditti” has described the South Carolina countryside as beset by “bandit gangs of chameleonic

²³ Thomas Brown to John Alexander Lillington, February 19, 1781 and March 24, 1782, in *SRNC*, 15:423 and 16:245-246.

²⁴ Charles C. Crittenden, “Overland Travel in North Carolina, 1763-1789,” *NCHR* 8, no. 3 (1931), 243.

loyalty.”²⁵ This was certainly the perspective of many contemporaries, especially regular army officers, who bemoaned the outrages and abuses on both sides. Still, the most notorious partisan leader and enemy of the state in North Carolina was without a doubt a committed Loyalist. David Fanning, a militia leader who operated out of Rutherford and Chatham counties in the eastern Piedmont after Cornwallis’s invasion, was perhaps the most successful partisan fighter of the Revolutionary era. Writing years after the Revolution was over, Fanning claimed that “Rebellion according to Scripture is, as the Sin of Witchcraft,” and throughout much of the Revolution he pursued Whig rebels with an almost Biblical fury.²⁶ A native of South Carolina, he fought in South Carolina alongside the partisan leader “Bloody Bill” Cunningham for more than three years, in the process becoming a near-legendary figure in the backcountry. He suffered several serious wounds, and escaped captivity multiple times before accepting a pardon from South Carolina governor John Rutledge in 1779. With the fall of Charleston in 1780, he returned to the fight, abrogating his pardon and joining a force of Loyalists led by British major Patrick Ferguson. After the catastrophic Loyalist defeat at Kings Mountain, Fanning made his way to Deep River, a settlement in Chatham County, just south of Hillsborough. There he began recruiting followers that he took into the field once Cornwallis’s forces entered the area. Fanning rapidly became the scourge of Whigs in the region, leading a constantly-growing partisan force of mostly area men on relentless,

²⁵ Harry M. Ward, *The War for Independence and the Transformation of American Society* (London: University College London Press, 1999), 78.

²⁶ David Fanning, “Narrative of Colonel David Fanning,” *SRNC* 22: 192-94.

slashing raids into the countryside, burning houses and terrorizing families that many of Fanning's men must have known for years. These raids had military objectives, but they also frequently took the form of personal retribution, as Fanning recalled in his widely-read memoirs published years after the war:

[After being ambushed by Whig militia] we took to the woods and unfortunately had two of our little company taken, one of which the Rebels shot in cold blood, and the other they hung on the spot where we killed the man [in a previous engagement]. We were [so] exasperated at this, that we determined to have satisfaction...

One of Fanning's spies led them to a "party of Rebels plundering his house," and the incensed Loyalists attacked and destroyed the small body of men.²⁷

As one historian of the backcountry conflict has observed, many in the Piedmont seem to have regarded Fanning as a sort of freedom fighter, the protector and defender of persecuted Tories in the backcountry who could look nowhere else for justice and security. Fanning himself portrayed his actions in precisely this light:

Those people have been induced to brave every danger and difficulty...rather than render any service to the Rebels in the heart of the country—their properties real and personal, taken to support their enemies—the fatherless and widows stripped, and every means of support taken from them--their houses and lands and all personal property taken, and no resting place, could be found for them.²⁸

²⁷ Fanning, "Narrative," *SRNC* 22: 192-94.

²⁸ *Ibid*, 198. For the interpretation of Fanning as "freedom fighter," see Crow, "Liberty Men and Loyalists."

Fanning had good reason to view himself in this way. He enjoyed considerable support from friendly communities in Randolph and Chatham counties, whose residents never betrayed him for the considerable bounty placed on his head by the Whig government. As one exasperated Randolph militia officer put it, Fanning and his men were “harbored and secreted” by sympathetic people in his county.²⁹ To Whigs, Fanning was the embodiment of criminal Loyalism, a brigand whose depredations on civilians violated accepted norms of war. But the fact that the state government winked at violations by Patriot partisans explains Fanning’s appeal to many North Carolinians.

While many of Fanning’s men joined out of a desire for plunder, others did so from a sense of personal grievance and even fear. A general sense of the mood in the partisan fighter’s camp is recorded by Herndon Ramsey, a general in the North Carolina militia captured in Fanning’s raid on the Chatham courthouse. Writing from a remote Loyalist stronghold in Hoke County where he was held prisoner, Ramsey recorded the complaints he heard from his captors, who “complained of the greatest cruelties, either to their persons or property” brought upon by the Whig government, the militia, and by lawless partisan bands:

Some had been unlawfully Drafted, Others had been whipped and ill-treated, without tryal; Others had their houses burned, and all their property plundered, and Barbarous and cruel Murders had been committed in their Neighborhoods...[U]nless an immediate stop is put to such inhuman practices...the whole country will be deluged in Blood, and the innocent will suffer for the guilty.³⁰

²⁹ John Collier to Burke, February 25, 1782, *SRNC* 16: 203.

³⁰ Herndon Ramsey, et al to Burke, July 22, 1781, *SRNC* 22: 550-551.

For his part, Fanning never made it clear—beyond a sense of loyalty to the Crown—why he chose to undertake such great exertions as a Loyalist, though the confiscation of some of his property by South Carolina militia on the trading path to the Cherokee towns in 1775 may have played a role.³¹ Nevertheless, he indisputably provided protection for the region's Loyalists. Several of his raids on the Chatham County courthouse in 1781 and 1782 took the familiar backcountry form of rescuing prisoners from jail, and he consistently sought to leverage prisoners taken to secure paroles for Tories that may have been executed otherwise. His account of his exploits, published in 1790, was in no small part intended to persuade the British government to provide more support for people who had suffered for their Loyalism, including Fanning himself. Fanning corresponded with and sought orders from British officers in occupied Wilmington, including Cornwallis himself, and published a list of regulations for the state's Loyalist militia. In a daring raid on Hillsborough in 1782, he took North Carolina governor Thomas Burke prisoner, sending him to Charleston, still occupied by the British army, as a prisoner of war.³² He even proposed the establishment of a neutral territory in Chatham and Rutherford

³¹ Lindlay S. Butler, "David Fanning's Militia: A Roving Partisan Community, in Robert Calhoon, Timothy M. Barnes, George A. Rawlyk, eds., *Loyalists and Community in North America* (Westport, Conn.: Greenwood Press, 1994), 149. Butler argues that the more important factor in Fanning's Loyalism was the influence of the community in Raeburn's Creek, South Carolina (just southeast of modern Greenville). Several prominent men in this community were Loyalists, including William and Robert Cunningham. The former in particular was notorious among Whigs as a brutal partisan fighter. Still, for a brief time, Fanning is believed to have served in some capacity for the revolutionaries in South Carolina after accepting a pardon from the governor of that state.

³² *Ibid.*, 221; John Watterson, "Thomas Burke," in *DNCB* 1:281. Burke was quickly paroled by the British on the condition that he remain on James Island, outside of Charles Town, for the duration of the war. But Burke claimed that the people on the island, mostly bandits, threatened his life. He escaped from the island and returned to North Carolina, retaking his place as governor late in 1782. In so doing, he earned the enmity of officers on both sides, who saw violating parole as a serious breach of military custom.

Counties, where Loyalists might settle and live in peace. But despite his concern for at least the appearance of legality, Fanning matter-of-factly recounted summarily “burning Rebel houses,” hanging Whig prisoners, including a “commissary from Salisbury who had some of my men prisoners,” and taking one man’s wife and children along with “three negro boys, and eight head of horses” hostage in order to secure the return of a mare the man had taken in escaping captivity.³³ Fanning himself remembered that during his exploits in 1781, he “lived by plunder and by cutting off supplies,” and “commanded a number of Free Booters who were much feared by the Rebels.” Fanning’s use of the word “freebooter” suggests that he had few illusions about the motives of some of his command—the word connoted a thief or a pirate in eighteenth-century usage.

A grand jury returned a murder indictment against Fanning in 1783 for shooting Andrew Belfour, a Randolph County judge, assemblyman, and Continental officer, in cold blood, allegedly on his front porch and in full view of his daughter.³⁴ Fanning never faced trial, but one of his lieutenants, Frederick Smith, was convicted and hanged for his participation in the crime. Even before the indictment, Fanning was a wanted criminal. He typified many Loyalist partisans who envisioned, in the words of one historian, “no chance of a peaceful life without a British victory.” His exploits illustrate the considerable gray area that existed between outlaw brigand and legitimate military

³³ Ibid., 228.

³⁴ Bill of Indictment, David Fanning, 1783. HDSC Criminal Action Papers; Horace W. Raper, “Andrew Balfour,” in *DNCB* 1:94-95.

leader.³⁵ With the British departure from Wilmington, Fanning's career as a partisan was over, and he repeatedly sought a pardon from the Continental Army with no success.

Fanning became the arch-criminal of the war for Whig leaders. When the Assembly passed a pardon law in 1783, he and two of his followers were specifically listed as exceptions, the only men so named. Like many Loyalists who had openly joined the conflict when Cornwallis's army entered the state, he left as the war came to an end, making his way first to East Florida, and then to Nova Scotia before finally settling in New Brunswick. In many ways, Fanning fit—or sought in retrospect to portray himself as—the model of a “social bandit” as described by historian Eric Hobsbawm. He was a “man of power” who nevertheless claimed to champion the “weak against the strong, the poor against the rich,” and especially “the seekers of justice against the rule of the unjust.”³⁶ Put another way, even for the Loyalists, he occupied a space created by the civil conflict—part legitimate combatant, part righteous vigilante, part freebooter. For state authorities, Fanning and his men were notorious criminals whose very existence was a threat to their authority, or, as one official put it, “pests of Civil Society” that had to be eradicated in order to achieve order.³⁷ The state attempted to take similar measures against other partisan gangs—Samuel Brown of Lincoln County faced attaintment by the

³⁵ Butler, “David Fanning's Militia: A Roving Partisan Community,” 150.

³⁶ Eric Hobsbawm, *Bandits* (New York: The New Press, 2000), 18.

³⁷ Butler, “David Fanning's Militia,” 151-155. The definition of “freebooter” is from Thomas Sheridan, *A Complete Dictionary of the English Language* (London: J.Dodsley, 1780), 413. Collier to Burke, SRNC16:203. The British garrison evacuated Wilmington in November of 1781, ending any British presence in North Carolina. British forces, however, remained in Charleston, South Carolina for more than a year after their departure from North Carolina.

General Assembly for “combining with divers wicked and abandoned persons with design of overturning the Present Form of Government.” Brown was accused of having “robbed and plundered” several houses in Lincoln County, and after escaping from jail, had continued to commit “Depredations on the good people of this State.” The bill, which was rejected on second reading in the lower house, also placed a £400 reward on Brown’s head, and it authorized North Carolinians to “kill and destroy” the Loyalist criminal “without incurring any Prosecution at Law whatsoever.”³⁸

“The cause of King George” was far from the only ostensible motive for backcountry criminality. Many self-described Whigs also took to the countryside to despoil homes and farms, making few distinctions in the politics of their victims. Generally, the situation in the backcountry created opportunities for criminals and bandits, men who cynically exploited the turmoil of the period and the lack of civil control in the region. Some made pretenses (or legitimate claims) of allegiance to one side in the conflict, others did not. Upon hearing a sermon by a Presbyterian minister friendly to the Whigs, a Loyalist prisoner described it as “stuffed as full of Republicanism as their camp is of horse thieves.”³⁹ The Moravians recorded that one man posing as a Continental Army colonel attempted in 1781 to requisition supplies from the town of Salem for his personal use. Once legitimate forces arrived, the man “could no

³⁸ Bill to Attaint Samuel Brown, Jr., April 24, 1780, General Assembly Session Records, April-May 1780, Box 2, NCA.

³⁹ Anthony Allaire, “Diary of Lieutenant Anthony Allaire, of Ferguson’s Corps, Memorandum of Occurrences during the Campaign of 1780,” in Lyman C. Draper, *King’s Mountain and Its Heroes: History of the Battle of King’s Mountain, October 7th, 1780, and the Events Which Led to It* (Spartanburg, S.C.: Reprint Co., 1967), 512.

longer maintain his pose,” and he fled into the countryside before the authorities could carry out a sentence of seventeen lashes. Less crafty and subtle were Whig militia, who repeatedly forced their way into taverns and other public buildings in the Moravian settlements, demanding food, drink, and other necessities. The Moravians singled out the Wilkes County militia in particular for their criminal excesses. These offenses were committed “on the pretense that we must be enemies of the country,” and the Wilkes County men “with oaths and harsh threats swore they would plunder us.”⁴⁰ In many cases—in fact the impression given by the sources is a *majority* of cases—claiming to act under the aegis of the Patriot cause afforded considerable protection to men whose motives were less than pure, as another typical incident in Guilford County illustrates. Adam Smith, a “poor old distressed man,” petitioned Governor Burke to recover a security bond he was forced to give several men who entered his house, “said they were liberty men & that he was a dam’d Tory,” and demanded three horses and “a hundred pounds hard money” on pain of immediate death. Smith prevailed on a family member to provide a bond for the sum in order to save his own life, and all he could do in the aftermath was beg the governor for redress. The men who entered his home and extorted the money from him operated in effect above the law because they claimed, seemingly without evidence, that he was a Loyalist.⁴¹ The residents of Salem appealed to General Nathanael Greene for protection from Whig militia who, far from providing safety to the community, were guilty of “Robberies committed in our Neighbourhood...threatening not

⁴⁰ Salem Diary, *MR* 4:1681, 1684; Offering of Praise and Thanksgiving, 1783, *MR* 4:1882.

⁴¹ Petition from Adam Smith concerning a robbery, *SRNC* 19:929.

to leave this Place, before they have killed a Number of us, besides many pretences to pick a Quarrel or invade People's Properties." These actions, another leader noted, were undertaken by "mob violence of a released hungry militia."⁴² It is likely the writer used "hungry" for literary effect, intending to evoke a pack of rapacious wolves or other predators. But if the war created opportunities for unscrupulous men, it also left many others with no alternative but to take to the countryside.

These offenses understandably enraged and frightened North Carolinians whose sympathies were seen as suspect by the state. Worse, the "Tory hunting" expeditions that began in the early years of the war only intensified as the British army entered the Carolinas. Violence and intimidation, tactics long deliberately deployed in support of the Revolution, became more common and more brutal. "For a considerable time" in 1781, one observer wrote, "all those who were suspected as Tories had been sought out, whipped and beaten." This practice, the writer noted, "induced those who feared like treatment to decide to declare themselves openly and enroll under [Loyalist leader] Gideon Wright."⁴³ Even neutrals not suspected of Loyalist sympathies had reason to fear Whig depredations. Cornwallis asserted that the "Shocking Tortures" meted out by Patriot militiamen in the Piedmont were not reserved only for "those who have taken part with us, but on many who refuse to join them."⁴⁴ As noted in the previous chapter,

⁴² Residents of Salem to Nathanael Greene, February 8, 1781, *MR* 4:1906; Marshall to Elders Conference, June 21, 1781, *MR* 4:1910.

⁴³ Frederick William Marshall to Henry XXVIII, January 2, 1781, *MR* 4:1906.

⁴⁴ Quoted in Piecuch, *Three Peoples, One King*, 238.

neutrality was, with the exception of a small minority of religious dissenters, criminalized by the state's imposition of oaths of allegiance, by the extralegal operations of the revolutionary committees, and, after independence, by the courts themselves.

Historian Robert Calhoon has observed that the Loyalists everywhere were “enmeshed in the tragedy of an ill-conceived exertion of national power.”⁴⁵ Loyalists in this interpretation were failed—betrayed, even—by the futile efforts of the Crown to maintain its power unchanged in North America. Indeed, this has been the verdict of several other recent studies of Loyalism, most notably Maya Jasanoff's *Liberty's Exiles*.⁴⁶ In North Carolina, and elsewhere, Loyalists were also caught up in attempts to establish the legitimacy and power of the state. On the one hand North Carolina Whigs from the earliest days of the war sought to root out every last vestige of loyalty to the crown, no small feat in a colony where the Revolution enjoyed such persistently lukewarm support. This entailed nakedly repressive measures: “tory-hunting” excursions, large trials, loyalty oaths, and other even harsher practices. But it also entailed restraining—or attempting to restrain—the excesses of the revolution. In no place were these excesses more brutal than in the backcountry, and in 1781, in particular, it was clear that the two legally-recognized authorities—the state government and the Continental Army—lacked the wherewithal to restrain the violence.

⁴⁵ Robert M. Calhoon, *The Loyalists in Revolutionary America 1760-1781* (New York: Harcourt Brace Jovanovich, 1973), 504-505.

⁴⁶ See Jasanoff, *Liberty's Exiles*, especially 5-17.

With the invasion of the British Army, the stakes of the struggle were raised in the Piedmont, and violence, already a means of persuasion, became more frequent and more pitiless in its application. That many Loyalists rose in response to several years of repression under Whig rule was obvious to many observers, especially the Moravians, who, as shown above, had their own misgivings about the revolutionaries. In 1781, reports that the main body of the British army was in Rowan County, one Moravian wrote, “induced the so-called Tories to rise, and more than a thousand gathered, did all kinds of deeds of violence to those by whom they had formerly suffered and finally joined the English.”⁴⁷ When the Salisbury militia was called out in response, another diarist recorded a cycle of violence that was repeated countless times throughout the backcountry:

Difficulties in the entire land have greatly increased...For a considerable time all those who were more or less suspected as Tories had been sought out, whipped, and beaten, houses had been burned, cattle driven away, and farms ruined. This induced those who feared like treatment to decide to declare themselves openly and enroll under [Loyalist leader] Gideon Wright. On the other hand those who had been active against the Tories were afraid they would be attacked...Finally all the militia were called out...and Gideon Wright’s crowd were defeated...[General Smallwood of the Continental regular army] expressed his great disapprobation of the excesses committed here by the militia.⁴⁸

⁴⁷ Frederic William Marshall to Joachim Andresen, 1896, *MR* 4: 1901; Crow, “Liberty Men and Loyalists,” 125-178.

⁴⁸ Marshall to Henry XXVIII, Count Reuss, 2 January 1781, *MR* 4: 1906. Smallwood had corresponded with Cornwallis about the excesses committed by Whig militia at Kings Mountain, a letter which demonstrates that the desire to rein in the militia occupied the commanders of both forces. Lee, *Crowds and Soldiers*, 188-190.

Gideon Wright, a Surry County planter, was a committed Tory, but it was the treatment that the Whigs had visited on less committed men in the countryside that led to the Loyalist rising.⁴⁹ As the Moravians perceived, Loyalism was for these men a legitimate, if desperate, recourse, a means to security and justice in the absence of a criminal justice system.

The passage also illustrates that the militia, always a problematic instrument of control and social order accountable to Whig leaders in Salisbury, remained a liability to Continental and state leaders desperate to pacify the region. Nathaniel Greene, commanding the main body of the Continental army pursued through North Carolina by Cornwallis, was particularly concerned with the excesses of whig partisans, including militia leaders such as Griffith Rutherford, characterized as a “bloodthirsty old scoundrel” by one Continental officer.⁵⁰ With public figures such as Rutherford contributing to the anarchy in the region, it is no wonder that backcountry leaders longed for a return to public order. Salisbury and Rowan residents complained that there was “Scarce the Shadow of civil government exercised in the State,” and petitioned the Assembly to reopen the courts, which were closed when Cornwallis approached Salisbury in 1781.⁵¹ As seen above, the breakdown in civil authority accompanied the abandonment—or at least a shifting—of cultural restraints on violence between Whigs

⁴⁹ Frank Salter, “Gideon Wright,” in *DNCB* 6:277; Crow, “Liberty Men and Loyalists,” 140-141.

⁵⁰ A. Roger Ekirch, “Whig Authority and Public Order,” in *An Uncivil War*, 115.

⁵¹ *Ibid.*, 112.

and Tories as the war deteriorated into a conflict based more on retribution than conventional military objectives.⁵²

As the conflict escalated, many leaders on both sides sought to stoke the sense of personal grievance that animated many backcountry partisans. In calling for Loyalist volunteers while camped in Tryon County, British army major Patrick Ferguson issued a remarkable proclamation in the fall of 1780:

Unless you wish to be eaten up by an inundation of barbarians, who have begun by murdering an unarmed son before the aged father, and afterwards lopped off his arms, and who by their shocking cruelties and irregularities, give the best proof of their cowardice and want of discipline; I say, if you wish to be pinioned, robbed, and murdered, and see your wives and daughters, in four days, abused by the dregs of mankind—in short, if you wish or deserved to live and bear the name of men, grasp your arms in a moment and run to camp...If you choose to be pissed upon forever and ever by a set of mongrels, say so at once and let your women turn their backs upon you, and look for real men to protect them.⁵³

Ferguson's appeal was not to patriotism, nor for even loyalty to the Crown. He recognized that backcountry men were motivated less by these abstract concerns than by immediate fears of an enemy he portrayed as inhuman and brutal.

Ferguson and other leaders successfully portrayed Whigs as bloodthirsty murderers, largely because in many cases they fit the part. The British officer's evocation

⁵² Lee, *Crowds and Soldiers*, 194-211.

⁵³ Quoted in J. David Dameron, *King's Mountain: The Defeat of the Loyalists, October 7, 1780* (Cambridge, Mass.: Da Capo Press, 2003), 30, and Hank Messick, *King's Mountain: The Epic of the Blue Ridge "Mountain Men" in the American Revolution* (Boston: Little, Brown, and Company, 1976). Contemporary records of this proclamation are lost, and some accounts, especially those from the early twentieth century, have Ferguson using the term "degraded" instead of the less decorous "pissed upon." For a recent account and a commentary on the proclamation, see Hoock, *Scars of Independence*, 315.

of Whig fighters who severed arms and committed other shocking atrocities was in fact a reference to Surry County officer Benjamin Cleveland, who earned the sobriquet “Bull Dog,” and a murder indictment, for his pitiless approach to dealing with Tory prisoners.⁵⁴ On the other hand, it is difficult to overstate the hatred that many Whig soldiers, in particular, felt for Loyalists. Many years after the war, the descendants of one Continental soldier recalled that their aged father still “became excited at the mention of the name of a Tory...and would soon become transported by that monster which he termed his greatest self-enemy.”⁵⁵ One Loyalist wrote that “one Poor woman” near the North and South Carolina border “expressed great surprize at seeing our men so mild, she asked if there were not Heathens in our Army that eat Children, she had been told there was.”⁵⁶

In this febrile environment, incidents like the massacre described by Moses Hall at the beginning of this chapter were, unsurprisingly, commonplace. The cold-blooded murder of Pyle’s men was unquestionably an atrocity, but the quasi-legal condition of the militia made the courts-martial that occurred regularly in the region take on an air of summary justice. In the aftermath of the resounding Whig victory at Kings Mountain, thirty Loyalist militia were condemned in a brief court martial by twelve Whig officers, characterized by a Loyalist officer as an “infamous mock jury.” One man remembered

⁵⁴ Hoock, *Scars of Independence*, 319-320. Governor Alexander Martin pardoned Cleveland for the murder.

⁵⁵ Preface to James Collins, *Autobiography of a Revolutionary Soldier*, ed. John M. Roberts (Clinton, La.: Feliciana Democrat, 1859).

⁵⁶ *Diary of Lieutenant Anthony Allaire*, 511. Uzal Johnson, *Captured at Kings Mountain: The Journal of Uzal Johnson, A Loyalist Surgeon*, Walter Kaub and Robert Weir, eds. (Columbia: University of South Carolina Press, 2011), 29.

that the families of the condemned men converged on the scene. Two daughters of one officer—Ambrose Mills, whose arrest was described in the preceding chapter—were “comforted with being told their Father was pardoned,” only to find out in short order that he had, in fact, been hanged. “Words can scarce describe the melancholy Scene,” the man wrote. “The two Young Ladies swoon’d away and continued in fits all Night.” Another woman whose husband had died on the gallows “with a Young Child in her Arms set out all Night in the Rain with her Husbands Corps, & not even a Blanket to cover her.”⁵⁷ But only three men, all officers, were executed—the officers reprieved the others. Fanning, as we have seen, also routinely had men summarily shot and hanged for a variety of offenses.

In the midst of these seemingly interminable cycles of reprisals and retributions, even some of the antagonists despaired that peace would ever be possible. Stephen Drayton, a Continental officer, touched on a familiar theme when he wrote Governor Thomas Burke that “we have by our own imprudencies & irregular proceedings made more Enemies, than have become so from mere inclination.” The realization that Whig excesses had driven many into armed Loyalism was not unique to Drayton. But Drayton argued that the violence, if not checked by military discipline, threatened to undermine the Revolutionary cause in other, more fundamental ways. “Can we feel ourselves,” he asked rhetorically, in “a State of expecting success to our grand undertakings, if we attempt the attainment by such means!” He feared that the “wanton exercise of cruelty”

⁵⁷ Johnson, *Captured at Kings Mountain*, 33.

by Whigs against Loyalists might lead to a future of perpetual civil war, and he argued that the power of life and death over accused traitors had to be vested in civilian authorities. The state government, Drayton argued, should never allow soldiers to have arbitrary authority over the lives of Tories. As he pointed out, “if such actions receive high sanction who is safe where prejudice, envy or Malice may prevail in the breast of a bad man; are not the best liable to be called an Enemy & treated as such?” Significantly, he assured the governor that “the minds of the Men never wanted conciliatory measures to be used more than now.”⁵⁸ Drayton wrote as a military leader charged with pacifying the countryside. He recognized that the cycle of violence and retributive justice that gripped the North Carolina backcountry threatened to spin out of control—indeed, he argued that it already had. Worse, he feared that its continued escalation threatened to rend beyond repair the fabric of the society the revolutionaries hoped to create.

Recent scholarship has tended to vindicate Drayton’s assessment. Writing about the civil war in the South Carolina backcountry, one historian has recently written that the British strategy failed not because Loyalists were “too few, too passive, or too cruel, but because the rebels relentlessly murdered, imprisoned, abused, and intimidated those who supported the king’s government.” In short, Whigs far more than Loyalists were responsible for the waves of violence that inundated the region between 1781 and 1783.⁵⁹ This recognition, of course, challenges conventional popular narratives as well as historical interpretations that have emphasized either British incompetence or lukewarm

⁵⁸ General Stephen Drayton to Thomas Burke, July 6, 1781, Clark, ed., *SRNC* 15:511-13.

⁵⁹ Piecuch, *Three Peoples, One King*, 5-7.

Loyalist sentiment as the reasons for British failure. I have argued that in North Carolina too, the most important factor in sustaining the fury of the backcountry war from 1781 to 1783 was the desire of many Loyalists for revenge and retributive justice. But more significant to this study than the causes of civil discord in the Piedmont were its effects on the people of the region. In Loyalists, the war had created an entire class that were outside the law, criminals of conscience, of action, or both. Ultimately, though, they lost. How these people, outlawed by the state and vilified for more than seven years, would be reintegrated into society was an especially urgent question for a society attempting to fashion a new order out of anarchy.

Treason and Reconciliation

Upon his arrival in the Carolinas, Continental General Nathanael Greene recognized the need for restraint in dealing with the profoundly divided population in the region. He wrote that he had “always observed both in religion and politics moderation answers the most valuable purposes. Persecution either in the one case or the other but too commonly established the interest it meant to destroy.”⁶⁰ The wisdom of this observation is borne out by the grievances held by Loyalists quoted above, crimes by Whig partisans that drove many backcountry men who may have otherwise preferred peace and neutrality to arms. Notwithstanding Greene’s call for pragmatism, the right blend of coercion, suasion, and appeals to common sense had proven elusive for North

⁶⁰ Greene to Griffith Rutherford, January 29, 1782, in Dennis M. Conrad, Roger Parks, and Martha King, eds., *The Papers of Nathanael Greene*, vol. 10 (Chapel Hill: University of North Carolina Press, 1998): 277; Ronald Hoffman, “The ‘Disaffected’ in the Revolutionary South,” in Young, ed., *The American Revolution: Explorations in the History of American Radicalism*, 312.

Carolina's leaders in the Piedmont. As one historian has recently written of this problem in post-war America, "a decade of brutal civil war had habituated Americans to violent conflict resolution and generated a thirst for vengeance that no treaty could quickly assuage."⁶¹ While North Carolina's backcountry, as we have seen, experienced waves of violence that dated to the War of the Regulation, the region only experienced the incursion of the British army in 1781. Other regions—Long Island, New York, for instance—endured partisan fighting for the duration of the war. Still, the internecine bloodletting that followed left behind a people at once starved for peace and, if not exactly thirsty for blood, at least wary of conciliation with the Tories.

Since independence, North Carolina's Assembly had passed a series of laws that defined and criminalized Tories and stipulated punishments for those found guilty of Loyalism. In so doing, they stigmatized the Loyalists as "inimical," criminals unworthy of citizenship in the new state. But if these acts, some of which were discussed in the preceding chapter, amounted to a regime of persecution for the Loyalists, they also, almost without exception, held out the possibility of reconciliation to those willing to confess their wrongdoing and pledge their future allegiance to the state. The first confiscation act, for example, passed in November of 1777, provided for the confiscation of the property of all men who had left the state when the Revolution broke out, or had "aided or abetted the enemies of the United States." But it also allowed these disaffected citizens to avoid confiscation by taking the oath of allegiance and being "admitted to the

⁶¹ Hooch, *Scars of Independence*, 364.

Privilege of a Citizen of this State.”⁶² By 1780, with the British Army fanning out from Charles Town in South Carolina, the situation was more urgent. So many Loyalists and other criminals had been arrested that the county and district jails were insufficient to contain them, and, more ominously, “the armies of the enemy, now in the State of South Carolina” were “preparing to carry the war into this State.” Under these alarming circumstances, the Assembly allowed local magistrates to assemble ad hoc juries to indict, “hear, try, and determine” cases against alleged traitors, even those who were not from the county where they were captured. In another departure from legal tradition, the act also specifically denied counsel to the accused, though treason was a capital offense.⁶³

One year later, citing wartime necessity, the Assembly authorized the governor to call special courts of oyer and terminer, presided over by “any three persons” within a judicial district the governor deemed competent to serve as judges. These courts were to try accused traitors, and the law empowered the presiding judges to order the “immediate execution” of the convicted if they found it necessary. In another abandonment of common law proceedings, the law further forbade the accused from seeking an arrest in judgment based on defects in the indictment. The prosecutor was not even “confined to the strict forms of bills of indictment” usually part of the criminal process.⁶⁴ If the courts convened under these criminal procedures were not as arbitrary as the military courts-martial that meted out summary justice to Loyalists, they were still extraordinary. Indeed,

⁶² Lucas, “Cooling By Degrees,” 12-27; *SRNC* 24:123-124.

⁶³ Acts of the North Carolina Assembly, 1781, *SRNC* 24:348.

⁶⁴ *Ibid.*, 396-398.

as Chapter Five will illustrate, they resembled, at least in form, the courts convened to hear criminal charges against enslaved people in North Carolina.

The Tories who sparred with Patriot militia in the countryside were not the only men proscribed by the state as criminals. Many committed Loyalists departed the state even before independence, making their way to England, the Caribbean, or to areas under British control, especially New York City. These families were almost without exception wealthy, and though many had not been in North Carolina in years, they still maintained extensive connections, often based on family and commercial ties, among the state's revolutionary political leaders. Nevertheless, a confiscation act passed in 1782 specifically provided for the sale of their lands. Included were the holdings of sixteen powerful landowners and merchants in the Piedmont, as well as several land speculators—Henry Eustace McCulloh and Edmund Fanning very prominent among them—who owned enormous tracts of land in the region.⁶⁵ This measure was undertaken as much to cover the mounting expenses of the war as to exact retributive justice on traitors, but whatever its motivations, it occasioned a spirited debate in the Assembly. Conservatives, mostly from the state's easternmost counties, argued in defense of the principle of preserving property, fearing that the confiscation of estates augured an unwelcome radical turn to the Revolution. These fears were shaped by a longstanding antipathy toward backcountry politicians as well as their sympathy for personal friends

⁶⁵ Acts of the North Carolina Assembly, 1782, SRNC 24:424-429. Though officially proscribed, some Loyalists maintained cordial epistolary relationships with even the most committed Whigs throughout the Revolution. Henry Eustace McCulloh, for example, regularly corresponded with, among others, James Iredell, his cousin and, for a time, attorney general of the revolutionary state. Griffith J. McRae, *The Life and Correspondence of James Iredell*, vol. 1 (New York: Peter Smith, 1949), 594-595.

and family. On the other hand, the Assembly's move to punish wealthy transgressors by confiscating their property was not unique to North Carolina and probably represented an effort to grab low-hanging fruit, since most of the families targeted had long since left the state. Some of the landholders affected by this law, of course, were unpopular in the Piedmont even before the Revolution. Though the confiscated lands were sold by specially-appointed commissioners or the sheriff at public auction, the policy was clearly not an effort at land redistribution—its terms favored those who could pay in specie at the time of sale rather than buying on credit, closing out most backcountry farmers. One of the law's provisions also condemned the “sundry licentious persons” who had settled on lands abandoned by Loyalists, squatters who defied both the Whig government and Loyalists.⁶⁶

Historian Howard Pashman has argued in a recent study that in New York, property confiscation and redistribution were crucial to the formation of the post-revolutionary state. By offering relatively inexpensive land to freeholders, the state gained popular support for its functions, especially the courts. Thus New York, at least as divided by civil conflict as North Carolina, found a measure of stability in the wake of revolutionary chaos.⁶⁷ There is circumstantial evidence, mostly the complaints of powerful easterners, that ordinary North Carolinians favored punitive measures against Loyalists out of pecuniary interest. Clearly, backcountry farmers had an interest in the

⁶⁶ Acts of North Carolina General Assembly, 1782, *SRNC* 24:424-429.

⁶⁷ Howard Pashman, *Building a Revolutionary State: The Legal Transformation of New York, 1776-1783* (Chicago: University of Chicago Press, 2018).

continued enforcement of rigorous confiscation laws, and opposed leniency for especially large landholders, whose holdings could be acquired from the state with relatively little expense. The treatment and condition of Loyalists had been among the most contentious questions dividing North Carolina's politicians since 1776. In general, eastern elites, men of property, tended to support conciliatory policies toward the state's Loyalists, while western radicals favored aggressive measures, including confiscation. The political issues dividing the state at the highest levels are not the focus of this chapter, but it is significant that many Eastern politicians, having backed highly repressive measures against Regulators, in the aftermath of the war took a more measured approach toward the prosecution of Loyalists, who their adversaries characterized as dangerous traitors and criminals unworthy of protection by the state. Archibald Maclaine, an assemblyman from New Hanover, was especially vocal and tireless in his defense of former Loyalists, who he thought should be reintegrated with a minimum of punitive measures. Writing to a relative who had been barred from re-entering the state, he decried the "persons among us who would promote such persecutions" as banishment and confiscation. These "violent people" threatened, in his mind, the peace and stability of the state by their insistence on harsh terms for former Tories.⁶⁸

Still, if confiscation represented harsh retribution for a criminal class, it was not a radical scheme for land redistribution. In Guilford County, for example, Henry Eustace McCulloh lost over 4800 acres, much of which went to a single buyer, John Willis.

⁶⁸ Archibald Maclaine to George Hooper, March 12 1783, *SRNC* 16:944, 981. Some eastern politicians favored punitive measures against former Loyalists in the aftermath of the war, but support for these measures was almost unanimous in the Piedmont.

Similarly, in Orange County, James Williams, who had also invested extensively in neighboring Guilford, purchased over 5300 acres of land, including tracts confiscated from McCulloh, William Tryon, and Edmund Fanning, the chief antagonists of the Regulators in the late 1760s. McCulloh, who claimed title to over 800,000 acres in the Piedmont, protested these confiscations, with some support from North Carolina power brokers like Archibald McLaine and James Iredell, until the 1790s, but his efforts were ultimately futile. He, like many other large Loyalist landholders, applied for compensation to the British Loyalist Claims Commission, which ultimately awarded him £12,047, a fraction of his claim. As McCulloh's example demonstrates, confiscation did not necessarily lead to land distribution in the backcountry. Rather, most of his lands, especially choice holdings in the region's river valleys, were snapped up by wealthy men with no Loyalist baggage, effectively replacing one large land speculator with another.⁶⁹

In 1783, the North Carolina General Assembly took a significant step toward reintegration of Loyalists. In the spring, with the war all but over, the legislature passed an "Act of Pardon and Oblivion," a contested piece of legislation that pardoned "all and all manner of treasons, misprision of treason, felony or misdemeanor, committed or done since the fourth day of July, seventeen hundred and seventy-six, by any person or persons whatsoever." Essentially, the law pardoned all of those North Carolinians who had actively expressed Loyalist sympathies but had remained in North Carolina and never borne arms against the revolutionary state. Still, this measure, while seemingly expansive

⁶⁹ Demond, *Loyalists in North Carolina*, 240-250; Price, "Henry Eustace McCulloh," *DNCB* 4:134.

in its leniency, had limits. The Assembly specifically denied a pardon to a number of Loyalists, a group that essentially included all who had taken meaningful action against North Carolina:

...persons who have taken commissions, or have been denominated officers, and acted as such under the King of Great Britain, or to such as are named in any of the laws commonly called confiscation laws, or such as have attached themselves to the British and continued without the limits of this state, and not returned within twelve months previous to the passing of this act. Provided further, That nothing herein contained shall extend to pardon Peter Mallette, David Fanning and Samuel Andrews, or any person or persons guilty of deliberate and wilful murder, robbery, rape, or house burning...

The law disqualified Loyalists from holding public office in North Carolina, and it accompanied another act that indemnified Whig officials, including military members, from lawsuits for wrongful imprisonment, confiscation, or other offenses against Loyalists during the war.⁷⁰ While the aim of the Act of Pardon and Oblivion was clearly to promote reconciliation—and thus order—through forgiveness and forgetting, there were real and tangible limits to this approach. Only the crimes of Whigs were truly consigned to “oblivion,” a fact made clear by a law, passed in the same session as the Act of Pardon and Oblivion, that indemnified Whigs who had “acted in defence of the State, and for the preservation of Peace during the late War,” protecting them from both civil suits and prosecution. This law was especially aimed at shielding officers of the state who had impressed war materiel during the conflict, but it demonstrated a legal double

⁷⁰ Acts of North Carolina General Assembly, 1783, *SRNC* 24:489-91. Significantly, the preamble to the Act also expressed an “earnest desire to observe the articles of peace” as a factor contributing to the passage of a pardon law.

standard that also prevailed among ordinary North Carolinians.⁷¹ As the war came to an end, Loyalist offenses, and Loyalism itself, still loomed large in legal and public memory.

Beyond North Carolina, the fate of white Loyalists and their property was a major point of contention in negotiations to end the war. The Treaty of Paris, concluded in September of 1783, contained provisions intended to protect Loyalists who had remained, or who intended to return to their homes. In particular, its fifth article stipulated that “Congress shall earnestly recommend it to the Legislatures of the respective States to provide for the Restitution of all Estates, Rights and Properties” which had been confiscated from Loyalists in each state. In the following article, the Treaty specifically addressed the issue of criminal prosecutions for Loyalists:

That there shall be no future Confiscations made nor any Prosecutions commenced against any Person or Persons for, or by Reason of the Part, which he or they may have taken in the present War, and that no Person shall on that Account suffer any future Loss or Damage, either in his Person, Liberty, or Property; and that those who may be in Confinement on such Charges at the Time of the Ratification of the Treaty in America shall be immediately set at Liberty, and the Prosecutions so commenced be discontinued.

The fifth article of the treaty occasioned a great deal of debate in both the Continental Congress and in North Carolina. These debates involved early disputes over the nature of the relationship between the states and the Congress, but they also revealed fundamental disagreements within each state about the treatment of wartime Loyalists, especially

⁷¹ SRNC 24: 490. The colonial assembly passed similar legislation in the aftermath of the Regulation.

those who remained in the state after the cessation of hostilities.⁷² North Carolinians learned of the preliminary terms of the treaty in the late fall of 1783, and Congress ratified the final version in January of the following year. However, the North Carolina Assembly did not recognize the treaty as legally binding until 1787.⁷³

In her recent monograph on Loyalist reconciliation in South Carolina, Rebecca Brannon writes that “litigation and criminal prosecution did not (and does not) serve the interests of forgiveness and reintegration.”⁷⁴ Still, in North Carolina, the courts generally took a measured, legalistic approach toward prosecuting treason cases—for all the violence that took place outside the courtrooms, only a handful of convicted traitors were actually sentenced to hang by the courts. Moreover, dozens of bills of indictment were returned by grand juries without formal charges. The courts in the backcountry heard dozens of treason cases during and after the war, determining in the process the extent to which the new state government would exact retribution on the most disaffected people in the region. Among the most vexing questions raised for the state’s criminal justice system in treason cases were familiar ones: intent and motive. Given the endemic banditry in the region during the conflict, determining whether violent crimes were

⁷² The Treaty of Paris was negotiated by a team of diplomats including Benjamin Franklin, John Adams, and John Jay. The negotiators operated from the belief that the states would recognize Congress’s authority to ratify the Treaty, which would then be binding on the states. The ensuing debate in Congress over the degree of discretion the states would have in implementing the terms of the treaty was, essentially, a debate over the sovereignty of Congress versus that of the states. This debate is recounted in Aaron N. Coleman, “Loyalists in War, Americans in Peace: The Reintegration of the Loyalists, 1775-1800” (Ph.D. Dissertation, University of Kentucky, 2008).

⁷³ Lucas, “Cooling by Degrees,” 32.

⁷⁴ Brannon, *From Revolution to Reunion*, 8.

incidental to the war, or whether they were quasi-military—and therefore treasonous—in nature was often difficult. Men who had committed crimes while acting as a Tory partisan, as opposed to a private citizen, were subject to indictment for treason. Thomas Horn, an Orange County planter accused of assaulting Grisham Forrister on a road somewhere in Orange County, did so, his indictment read, while “acting as an officer in the King of Great Britain’s Army.” Horn, having beaten Forrister and stolen his gun, was eventually acquitted of treason. Though he avoided conviction, Horn stood trial in the first place because he was ineligible for pardon under the act of Pardon and Oblivion because he bore arms against the Whig government.”⁷⁵

It is difficult to ascertain how much of the violence that gripped the Piedmont during the Revolution was motivated by the Revolution itself. When the courts reopened after the war, the backlog of criminal cases on the docket further complicate matters. Superior Court dockets in Hillsborough and Salisbury in the immediate postwar era are full of violent crimes, but in most cases, it is not clear whether these offenses were committed by self-identified partisans or by criminals who acted from different motives. Somewhat paradoxically, several accused criminals sought to justify their crimes by arguing that they acted as Tories in committing them. In one especially egregious case, Charles Abercrombie, an Orange County planter, claimed that his assault on Elizabeth Pickett ought to be pardoned under the terms of the 1783 Act of Oblivion. The state’s Attorney General Alfred Moore, however, pointed out that the “act was intended to

⁷⁵ *State v. Horn*, HDSC Criminal Action Papers, 1783.

pardon offences occasioned by the late war between Great Britain and the United States of America and the offence charged...is an assault and battery...in no sort occasioned by the said War.” Likewise, William Clements, accused of horse stealing, unsuccessfully appealed to the Hillsborough Court for a pardon under the terms of the law.⁷⁶ This complicated the state’s efforts to restore order in the aftermath of the war—ironically, accused criminals had an interest in claiming that their actions were in a sense justified by the exigencies of war. It also conferred a certain degree of legitimacy to the Loyalists by accepting that abuses took place on both sides. “Offences occasioned by the late War” could, under certain circumstances, be forgiven.

In the courts, accused Loyalists adopted a number of strategies in their own defense. Many, especially young men, appealed to traditional notions of deference. They acknowledged their transgression, but claimed that, in a moment of poor judgment, they were led astray by influential people, many of whom were the local elites that held considerable sway in their diminutive backcountry communities. Other men emphasized the confusion and violence of the war, concerns which could not have been better calculated to evoke the empathy, if not actually the sympathy, of their neighbors. Aaron Terrell of Chatham County swore that he was “taken by a party of people called Tories and made Prisoner, in the woods of his own Neighborhood.” Terrell alleged that this “party of people,” probably Fanning’s partisan force, forced him to join them against his

⁷⁶ Pleadings, *State v. Charles Abercrombie* and *State v. William Clements*, 1783. HDSC Criminal Action Papers, NCA.

will.⁷⁷ These men argued, seemingly with considerable justification, that they had no real choice but to join the Loyalists.

As Rebecca Brannon has recently observed in South Carolina, this created a problem for a new republican government founded in part upon the principle of volitive citizenship. However, there was still a ritual of penance and even humiliation that had to be undertaken before former Tories could be readmitted. John Kimbrough, a Montgomery County planter, petitioned the legislature to release him to return home, claiming he was “unhappily, through various intimidations, led away and induced to Act in a Measure contrary to the Laws of the State. In penitent language, Kimbrough averred he was “fully convinced of his error and sincerely sorry for what he had done” and emphasized that he had obeyed the terms of his parole, received from Thomas Wade, a militia colonel.⁷⁸ Petitions for pardons and clemency in early America had always employed language that stressed the “deluded” nature of the subject. William Field, who accepted an officer’s commission in a Loyalist regiment, “acknowledge[d] with candour his Error,” and claimed that his conscience (as a former Regulator, he had sworn a loyalty oath in the wake of that conflict) and “the apprehension of Injuries” had caused him to hurry “down the Stream of Opposition without proper and Mature reflection for the Consequences.”⁷⁹

⁷⁷ Deposition of Aaron Terrell, HDSC Criminal Action Papers, 1781.

⁷⁸ Petition from John Kimbrough, February 4, 1782, *SRNC* 22:612.

⁷⁹ Petition of William Field, Committee of Propositions and Grievances, GASR, November-December 1785, *NCA*.

Clearly these men had every incentive to downplay their commitment to the Loyalist cause, but the very limited surviving evidence from treason trials in the Piedmont reveals a region and a people faced with difficult choices in the face of rapidly-changing events. While the North Carolina assembly, unlike South Carolina's, did not issue an omnibus pardon bill, all but the most intransigent and violent Tories could expect at least some measure of clemency from the state. North Carolina's leaders, in short, generally valued order over ideological purity as they went about the work of establishing the state.

Eighteen men faced trial for treason in the district courts at Hillsborough and Salisbury between January 1782 and April 1783. Of these, twelve were convicted, and all were sentenced to hang, though several received pardons. Several of these condemned men benefited from a proclamation issued by Alexander Martin on Christmas Day, 1781 that offered pardons to all Loyalists who would serve in the Continental Army for one year. Having thus "expiated their offence," these penitent Loyalists would be "entitled and restored to the privileges of a Citizen." Martin acknowledged that these "deluded" men were otherwise "left unprotected to the vengeance of the State," and expressed a wish to "stay the hand of the Executioner in the unnecessary effusion of the blood of Citizens who may be reclaimed." The proclamation exempted "Officers, leading men, and persons...guilty of murder, robbery, and house burning." As was typical of such offers of clemency, it rested on the assumption that only men, seduced by the "wicked

artifices” of their betters, could have committed the crime of treason against the state.⁸⁰ Meredith Edwards and Thomas Estridge, for example, were officers in Fanning’s militia, and were convicted of treason and sentenced to die in a special court session in January of 1782. Despite their notoriety by association with Fanning, and the fact that they were not, as officers, entitled to clemency under Martin’s proclamation, they secured pardons from the governor contingent on their enlistment.⁸¹ William Grimes and John Johnston, on the other hand, both planters, were convicted of “aiding the enemies of the United States and Murdering the Good Subjects thereof in a most Barbarous Manner,” and went to the gallows.⁸²

By the early 1780s, then, the courts were in effect determining who was worthy of citizenship, or at least the right to reside, in the new state and who was not. As one recent student of Loyalism has written, by trying Loyalists for treason, governments “singled out to local communities those who openly supported England and were incapable of being members of the political and social communities.”⁸³ At the same time, even in this very difficult time, treason remained very difficult to prove. Under the English legal framework that still prevailed in the new state, it was, in the words of one contemporary legal authority, “the most precisely ascertained” of all crimes precisely because it was the

⁸⁰ Proclamation of Alexander Martin, December 25, 1781, *SRNC* 17:1049.

⁸¹ HDSC Minute Docket, 1768-1783, NCA; Pardon from Thomas Burke for Meredith Edwards et al, *SRNC* 19:914-915. Two other men convicted of felony, William Duke and Thomas Hunt, were offered similar terms for a pardon.

⁸² Warrant for Grimes and Johnston, HDSC Criminal Action Papers, 1782.

⁸³ Coleman, “Loyalists in War, Americans in Peace,” 220.

“highest...crime” one could commit.⁸⁴ Notwithstanding this high legal standard, the courts had been granted an extraordinarily wide berth in prosecuting traitors during the war, but the aftermath of the war witnessed no systematic legal retributions against the persons of Loyalists, even if many Whigs coveted their property. The majority of the most infamous Tories—David Fanning, for example—who survived the war fled before they could face prosecution, and in the aftermath of the conflict. Criminal proceedings continued in Piedmont district courts as late as 1785, when James Kerr faced trial in Salisbury for returning to North Carolina without the permission of the legislature after having “attached himself to the Enemies of this State.”⁸⁵

Throughout the Revolution, the North Carolina legislature defined treason in increasingly narrow terms, and in ways that held the individual responsible while providing support for innocent family members. This was a significant departure from an English legal practice—attainment, or “corruption of blood” that essentially affixed the “stain” of treason to a convicted man’s children, denying them the right to inherit his property.⁸⁶ The 1781 law, for example, allowed for the restoration of confiscated property to the family of a person who had served in the American army after first leaving the state with the British army. One student of Loyalism has remarked that the “tremendous effort” taken by North Carolina’s Assembly to support the families of Tories was unique

⁸⁴ Blackstone, *Commentaries* 4:75.

⁸⁵ *State v. James Kerr*, SDSC Criminal Action Papers, 1785, NCA.

⁸⁶ Chapin, *American Law of Treason*, 8. North Carolina and Pennsylvania were the first states to provide for the families of convicted traitors.

among the colonies. Loyalists who returned to the state, or who never left it, appealed to familial concerns. Fields, the erstwhile Loyalist officer described above, “supplicate[d] for...protection” from the Assembly, pleading that they restore a “pittance of his late property” confiscated during the war so that he might support his “poor distressed family.” It is difficult to know how much of Fields’s appeal was affectation or formulaic, but the image he conjured was that of a defeated, remorseful Loyalist officer, a ruined man with no other option but to appeal to the “generosity of the Brave and Victorious Americans” to provide for his family.⁸⁷

Fields was able to petition the legislature because many in his neighborhood in Randolph County sympathized with him, and perhaps believed his remorse authentic—like others, he had first petitioned the Rutherford County court. Other men who could not appeal to their powerful acquaintances found that their appeals fell on deaf ears. James Kerr, for example, a Salisbury native and accused Loyalist, received no sympathy from his former friend and state legislator Griffith Rutherford when he asked for his assistance in returning to the state. Rutherford’s letter to Kerr indicates that Loyalism was not undertaken without thought—he pointed out to Kerr that “you were deffe to my advice at the time,” but having chosen to cast his lot with the Loyalists, he should expect no relief

⁸⁷ Roberta T. Jacobs, “The Treaty and the Tories: The Ideological Reaction to the Return of the Loyalists, 1783-1787” (Ph.D. Dissertation, Cornell University, 1974), 16-17; Petition of William Fields, GASR November-December 1785, NCA. Fields, whose two sons were also Loyalists, was out of the state when he petitioned the Assembly. He was later allowed to return on a petition of his wife. Eventually, his sons gained some of his confiscated lands. Lucas, “Cooling by Degrees,” 80-82.

from the state.⁸⁸ As noted above, Rutherford was a particularly committed Whig who advocated stringent measures to curb dissent during the war, so his response is not entirely typical of mainstream North Carolina opinion. Still, many in the colony opposed the easy reintegration of the Loyalists.

Like many Loyalists, Kerr eventually applied for compensation from the British government for his losses in service to the Crown, claiming that he was “ill-treated” because he had “never thrown off his allegiance to his Sovereign [and] was always deemed inimical to the Liberties of America.”⁸⁹ It is clear that those former Loyalists who were successful in convincing their neighbors that they were sincerely sorry for their crimes stood the best chance of being reintegrated, or at least left alone. As Governor Alexander Martin put it in an address to the Assembly: “Great numbers of [Loyalists] have laid down their arms and profess great contrition...but with what sincerity must be left to be proved.” Martin alluded to measures intended to ascertain the sincerity of these professions of remorse, but we cannot know how local neighborhoods determined the authenticity of Loyalist appeals. One Tory faced a banishment order after returning to the state and could find few friends to support his efforts to remain, perhaps because he was not suitably, or convincingly, penitent—Superior Court justice Samuel Ashe noted that he had maintained an “air of defiance” after his return.⁹⁰

⁸⁸ Rutherford to James Kerr, July 22, 1783, quoted in Coleman, “Loyalists in War, Americans in Peace.”

⁸⁹ Loyalist Claims Commission, AO 13/119, NCA.

⁹⁰ Lucas, “Cooling By Degrees,” 78.

Having petitioned governor Alexander Martin in 1784 for relief against the state's confiscation laws, former Hillsborough merchant Ralph McNair received a stinging reply:

It is not my business to criminate you on the part you have taken in the late contest between Britain and America—but only to suggest you have been decisive in the choice. You have deserted the Country in which you say you wished to have spent your Days. What satisfaction can you have in returning to her in her triumphant prosperity, when your late principal desire is frustrated which was to subjugate her to British depotism? Let your own feelings be the Judge.

Martin, of course, was making it his business to “criminate” his former friend, and his sentiments were widely held throughout the Piedmont, where feelings were still raw just one year after the war's end. Martin still left open the possibility that McNair might have done just enough to earn an exception to the Assembly's laws barring his return: While in New York, McNair had apparently intervened to ensure humane treatment of American prisoners. Additionally, and perhaps more importantly, he had important friends other than the governor: General Nathanael Greene had written a letter in his favor.⁹¹

A group of prominent men in Granville County petitioned the Assembly on behalf of John Hampton. They had “been acquainted with Mr. Hampton from the youth up,” and had always known him to be “an honest man, a good citizen, and a Friend to his Country.” He had, however, in an “unguarded moment,” been drawn in by “artful and designing men,” and “did take an active part against America for a short time.” His

⁹¹ Martin to Ralph McNair, January 10, 1784, *SRNC* 17:10. Whatever service he rendered the American prisoners while in Long Island, McNair was not allowed to return to North Carolina. He died in Pennsylvania (after taking the oath of allegiance in that state) a few months after writing the letter. Claiborne T. Smith, Jr., “Ralph McNair,” in *DNCB* 3:178.

friends asked that his “life in mercy may be spared.”⁹² Some Loyalists paradoxically emphasized their commitment to the royal government not only as a justification for their crimes, but as an implicit guarantee that they would remain loyal to the new state. William Collson, for example, went through the normal routine of acknowledging that he was led by men that he thought “much Wiser than my Self,” but that he was an easy target for Loyalist recruiters--and therefore a docile citizen of the new state precisely because he was loyal by nature. He had backed the Loyalist cause out of a “strong prepossession in favour of that Government under which I was born,” and had proven his loyalty to the new state by enlisting in the Continental Army, a precondition for citizenship for “disaffected” men.⁹³

As historian Rebecca Brannon has recently observed for postwar South Carolina, Loyalists who petitioned the state legislature for leniency thought they stood a better chance of success if they secured the support of their local communities. By petitioning the legislature, communities asserted their control over how, or whether, individuals were incorporated back into society. The “Inhabitants of Caswell County,” for example, petitioned the legislature on behalf of George Graham, who was confined in “a loathsome Prison” in Halifax. The petitioners offered security for his good behavior, and averred that Graham had already addressed his neighbors, “acknowledging his error, humbly imploring forgiveness...and faithfully promising for the future to become a good and

⁹² Petition of the Inhabitants of Granville County, GASR August-September 1780, NCA.

⁹³ Petition of William Collson, GASR August-September 1780, NCA. Collson’s petition was marked “rejected,” though the grounds for his rejection were not noted.

useful citizen of this State.” Rowan County petitioners described Edward Turner as a “sober, honest, and industrious man,” who had “until the late Insurrection demeaned himself as a good & faithful friend to the Liberties of this State.”⁹⁴ Petitioners emphasized their remorse, performing on paper an act of humiliation and expiation that must have occurred in front of their peers. Their petitions often repurposed the language of treason laws and proclamations, emphasizing that they were “deluded” by wicked men into betraying the Revolution.

Others who faced imprisonment or confiscation for their wartime behavior sought to play on the sympathies of the legislators. Isaac Newton, for example, admitted to “secreting himself near the British lines,” but flatly denied that he had ever joined Cornwallis’s men. In explaining why he did not appear to take the oath of allegiance that would have absolved him of these charges, he swore that he was in “the immediate embrace of a Dying Brother who would have suffered in my absence.” Indeed, Newton claimed that another of his brothers died shortly thereafter, and that he was on the way to take the oath when he was captured and imprisoned. His neighbors vouched for him, describing him as an “honest inoffensive man” whose “circumstances in life were unfavourable.” John Wall, a justice of the peace in Richmond County, begged the assembly for reinstatement, having been stripped of his position for “taking protection of the British.” Wall explained simply that “it was out of the Power of your Petitioner to git

⁹⁴ “Petition of Inhabitants of Caswell County,” GASR Joint Papers, January-February 1781, Box 1; “Petition of the Inhabitants of Rowan County,” GASR Petitions, April-May 1782, Box 1. Both of these petitions were denied. Graham apparently remained imprisoned in Halifax, and much of Turner’s property remained confiscated.

out of the way,” and that he had little choice. As was de rigueur with petitions, his fellow justices of the peace, “being well-acquainted with John Wall,” testified to his “zeal & attachment to his country.”⁹⁵ Unsurprisingly, petitions for clemency were far more likely to meet with success after the war’s end—most from 1782-1783, including Newton’s and Wall’s were rejected by the Assembly.

On the other hand, most of the handful of Whigs who faced trial for their actions during the war were either acquitted outright by the courts or granted pardons. In 1785, for example, a House committee heard a petition from Philip Alston, accused of the murder of Thomas Taylor in 1781. Alston was a prominent landowner and a militia officer, and the majority of the committee agreed that Taylor was an “Enemy to this State and was actually guilty of misprision of Treason” when Alston killed him. “Misprision of treason,” as described in Chapter Three, generally referred to disloyal statements, suggesting that Taylor had provoked Alston by damning the state or expressing his loyalty to the British. Several members of the committee, “Unwilling at all times to prevent the inquiries of Law into so heinous a crime as Murder,” dissented from the majority report, which called for Alston’s pardon. In any case, Alston eventually received his pardon.⁹⁶ As a further measure of the stance taken by the majority of the Assembly toward wartime atrocities by Whigs, the chair of the committee charged with hearing

⁹⁵ “Petition of Isaac Newton,” GASR Petitions, April-May 1782, Box 1; Petition of Justices of the Peace for Richmond County, GASR Petitions, April-May 1782, Box 1; Petition of John Wall, *ibid.* For lands set aside for Loyalist widows (and a handful of Loyalist men) see Lucas, “Cooling By Degrees,” 59-65.

⁹⁶ House Minutes, NCCSR 17: 399-400.

petitions for pardons was backcountry radical—and wartime scourge of Loyalists—Griffith Rutherford. This former whig general used his petition to steer through other appeals for pardons, including one for three Guilford County men indicted for the murder of Andrew Shannon, who had supposedly been a member of “a Banditti of Villains headed by one Fanning.” The language of the committee’s report on the petition emphasized the exigencies of war in the backcountry, when “the public Jails of the State were in such condition that no Prisoners could be detained.” Besides, one of the accused, James McAdon, lost a brother to Fanning’s militia. With the “Courts of Law, through the confusion of the times,” being “dormant,” Shannon would likely have escaped justice. Thus the committee validated retributive justice in wartime, at least by “Liberty Men.”

Another issue confronting legislators in the wake of the conflict was the condition of many families of Loyalists who had served. One particularly compelling case involved the family of Richard Edwards, an Orange County farmer who was killed in September of 1781 “having unhappily joined the Torys.” Edwards, apparently a single father, left behind five orphaned sons under the age of thirteen, including one boy “much afflicted with fits” who was “obliged to be confin’d being apt to stray off,” even at night. The couple charged with caring for the boys begged for help, since over four hundred acres in the Hawfields area, a “Negroe boy,” and a “Quantity of Cattle Hogs and Sheep” had been confiscated. These lands were, by 1782, “disputed” by local residents, who either sought to purchase them outright or to lay some claim to them. Jean Rutherford unsuccessfully petitioned the legislature in 1782 to return her lands, confiscated from her husband, who had apparently fought at Moore’s Creek Bridge only to be taken prisoner and die in a

Philadelphia prison. Rutherford's request was denied, but other Loyalist widows in the Piedmont, especially after the Treaty of Paris formally ended the war, received compensation from the state, either through the return of confiscated lands and other property or the allocation of unsold lands.⁹⁷

The motives of particular Loyalists in deciding to stay in their communities are beyond the scope of this dissertation, but it seems clear that, under a broad definition of "Loyalism," the vast majority of people who fit that description did not leave the state in the wake of the Revolution. Most ordinary men and women who decided to stay in the Piedmont probably calculated that their prospects abroad were less than auspicious. They may have also believed that their crimes—their loyalty to the Crown during the Revolution—were not so severe as to make their lives in the region untenable in the future. At the same time, having judged the mood within their communities, they saw reconciliation as a possibility. Given the reported prevalence of Loyalist sympathies, if not Loyalist activism, in the region, we can see that the state had a compelling interest in promoting harmony in the region through its stance toward this criminal class. Indeed, understanding Loyalists as a criminal class, inimical to the interests of the state, points to the scope of the problem. This problem was especially urgent in the backcountry, where Loyalism broadly defined was most prevalent, and where, as one group of Rowan County

⁹⁷ "Petition of John and Mary Campbell on behalf of the Orphan Children of Richard Edwards, Deceased," GASR April-May 1782, Box 2. The House took no action on this petition, presumably leaving it for Orange County justices to resolve. There is no further record of the Edwards children. "Memorial of Jean Rutherford," GASR April-May 1782, Box 1.

petitioners put it in late 1781, there was “scarce the Shadow of Civil Government.”⁹⁸ The flood of criminal cases that inundated the courts as the war wound down meant that it was simply not feasible to push every person suspected of behaving disloyally (a concept that was itself in flux throughout the war) through the criminal justice system. Moreover, the petitions of some prominent local men suggested that at least some Tories were worthy of personal forgiveness and official clemency for their crimes. The Act of Pardon and Oblivion acknowledged this reality, shielding all but the most notorious Tories from prosecution.

Still, the end of the war made it especially urgent that people distance themselves from the crime of Loyalism. The Moravians had maintained a neutrality rooted in religious scruples, and, like other pacifist sects in the region, they paid a higher tax in lieu of other material support for the war effort. While neutral, they nevertheless hoped not to be classed with Tories, a criminal class whose status in the state seemed especially precarious as the war dragged toward its conclusion. As early as 1780, the Moravians recognized that “it is unendurable, and in the end dangerous, if we permit ourselves to be accused of being Tories.” To be branded as traitors, they recognized, was an existential threat to their community, and was not “a dishonour to be borne for the sake of Christ.”⁹⁹ As the war came to an end, the Moravians found it even more important, despite their

⁹⁸ “Statement of Grievances, Freeholders of the Salisbury District,” Dec. 1781, GASR, Committee of Propositions and Grievances, April-May 1782.

⁹⁹ Salem Board Minutes, 1780, *MR*, 1607. Quakers, Mennonites, Dunkers, and other sects were assessed a “threefold tax” by the Assembly, a compromise measure with radicals who wished to enact confiscation measures against the Moravians in particular. While few accused the Moravians of Loyalist sympathies, they met with some resentment by Whigs who seem to have viewed them as war profiteers.

religious inclinations to neutrality—and their patent distaste for the Whig militia—to demonstrate that they were not Loyalist sympathizers. Others who had not yet done so continued to take loyalty oaths into 1784.

Whatever the tendencies of some local figures in the Piedmont, forgiveness for Tories became a political issue in the aftermath of the war. Historian Jackson Turner Main long ago argued that in North Carolina, as in many other states, political blocs that Main characterized as “Localists” and “Cosmopolitans” began to coalesce in both houses of state legislatures after independence. Main showed that, in North Carolina, these blocs voted with startling predictability on a range of issues, including tax increases, funds for academies, western land policy, and paper money emissions, among other things. These factions have generally been characterized as “radicals” and “conservatives” by historians of North Carolina politics.¹⁰⁰ Piedmont politicians almost without exception voted along “localist” lines, including on issues related to Loyalist policy. These politicians consistently opposed conciliatory measures introduced by a “small, influential minority” of attorneys and other “cosmopolitan” North Carolinians, including one act that would repeal any laws interpreted as inconsistent with the Treaty of 1783. These measures would have enabled Loyalists to recover damages for at least some of the property they lost during the Revolution.¹⁰¹ Notwithstanding their willingness of many to forgive

¹⁰⁰ See, for example, Robert L. Ganyard, “Radicals and Conservatives in Revolutionary North Carolina: A Point at Issue, The October Election, 1776,” *WMQ* 24, No. 4 (October 1967): 568-587.

¹⁰¹ Jackson Turner Main, *Political Parties Before the Constitution* (Chapel Hill: University of North Carolina Press, 1973) 311-317. As Main shows, the votes on these issues, where so-called Piedmont “localists” voted almost unanimously, anticipated the Federalist-Antifederalist division over ratification of the Federal Constitution in 1788.

individual transgressors in their communities, it seems that stringent policies toward Loyalists enjoyed considerable popular support in the Piedmont. Griffith Rutherford in particular advocated for an uncompromising position toward Loyalists after the war, a position that seems to have been in line with the opinions of his constituents. This anti-Loyalist sentiment was not confined to the Piedmont—Timothy Bloodworth of New Hanover County cited adherence to the instructions of his constituents in voting to condemn a long list of Loyalists in 1784. Bloodworth was the head of a faction in the Assembly that took a hard line on punishing Loyalists as irreconcilable criminals, and the bulk of his support was from the backcountry, where, one of his adversaries sneered, “his influence and his interest depend altogether on joining in the popular cry.”¹⁰²

Why was this the case? Perhaps because Loyalist crimes had most directly affected ordinary people in the backcountry. It could also be because the beneficiaries of conciliatory policies would include merchants and large landowners such as Henry Eustace McCulloh, who claimed to have lost over 800,000 acres of landholdings, mostly in Orange, Rowan, and Anson Counties, as a result of the war.¹⁰³

In these ways, the disposition of justice in the form of punishment for Loyalists remained at the center of attempts to restore (or establish) order on a region that had

¹⁰² Alexander Maclaine to George Hooper, June 14, 1784, *SRNC* 17:145; Maclaine to Hooper, June 25, 1784, *NCCSR* 17:149. Maclaine, an attorney and an assemblyman, was a leader in adopting a liberal stance toward Loyalists, which included Hooper, his brother-in-law.

¹⁰³ William S. Price, “Henry Eustace McCulloh,” in *DNCB* 4:134. McCulloh, an inveterate schemer, had hired a substitute to serve in the North Carolina Continental line on his behalf, even as he lived in England during the war. This was part of a plan to strengthen his claim to the lands in the event of an American victory. He received just over £12,000 in compensation for his losses from the Loyalist Claims Commission, a mere fraction of his claim.

been, in the words of a recent historian, “in the grip of violence for almost two decades.”¹⁰⁴ As late as 1794, confiscation was asserted in the Hillsborough court by attorney general John Haywood to justify a law that allowed the state to take judgments against tax collectors without appearing in court. “All the confiscation laws lately passed in this country,” Haywood argued, “what are they but proceedings to take away the property of absentees, who perhaps knew nothing of these intended proceedings?”¹⁰⁵ But as the preceding examples suggest, the Assembly never developed a coherent approach to Loyalist reintegration in the later years and the aftermath of the war. and the few fortunate individuals who were able to recover at least a fraction of their former holdings were the exception.

Hundreds of Loyalists left North Carolina in the wake of Cornwallis’s march through the state. Some left to serve alongside the British, others essentially as refugees who understandably feared reprisals from Whigs as they reasserted control of the state. Their first destination was often occupied Charles Town, where they remained until the withdrawal of the British garrison in December of 1782. Accounting for the fates of those Loyalists who did not return to the state is beyond the scope of this study, but many ended up in such far-flung locations as East Florida, Nova Scotia, the Bahamas, London, and, for many of the state’s African-American refugees, Sierra Leone.¹⁰⁶

¹⁰⁴ Hoock, *Scars of Independence*, 302.

¹⁰⁵ *State v. Joyce, North Carolina Reports: Cases Adjudged in the Superior Courts of Law and Equity of the State of North Carolina from 1789 to 1789* (Raleigh: Mitchell Printing Company, 1921), 56.

¹⁰⁶ Historian Carole Troxler has estimated that 475 North Carolina Tories made their way to Nova Scotia, and 150 in New Brunswick. Many of these had initially departed for East Florida, which was evacuated under order of the Crown after the territory was ceded to Spain in the Treaty of Paris. Troxler,

Sparse records exist for backcountry Loyalists who remained in the state after bearing arms in the conflict. In his account of his exploits, David Fanning described four men—Frederick Smith, Thomas Dark, John Cagle, and William Fanning—who died on the gallows after conviction for treason. Several other officers, Fanning wrote, were “murdered,” a word choice that suggests the men met with extralegal retribution for their crimes against the state.¹⁰⁷ As we have seen, most prominent Loyalists departed the state, but those who remained had varying experiences. Neither the criminal court records nor other sources from the war’s aftermath reveal widespread retributive violence in the Piedmont against ordinary people who had served with the Loyalists. Some accounts from other parts of the state, particularly Wilmington, suggest that Tories faced persecution as late as 1786.¹⁰⁸ The halting steps toward reintegration pursued by the state seem to have reflected ambivalence toward Tories at the local level. If people in the Piedmont lost their stomach for violent postwar retribution—perhaps because, despite the violence of the civil war years, most were not exactly committed Patriots themselves—they also saw the potential, if ultimately unrealized, benefits of a confiscation policy. Even moderate Loyalists had to publicly act out their remorse to secure support for their pardons.

The Loyalist Experience in North Carolina (Raleigh: North Carolina Department of Cultural Resources, 1976), 37-55.

¹⁰⁷ Fanning, Narrative, in *SRNC* 22:197-198.

¹⁰⁸ Demond, *Loyalists in North Carolina*, 178-179.

Legal historian Bradley Chapin, writing firmly within the Whig historiographical tradition, has emphasized the adherence to legal forms in treason cases, as well as other wartime criminal justice proceedings. By this measure, the Revolution was exceptional among the world's great upheavals, in that it featured no bloody retributions against its enemies:

Only a tiny minority of those charged with treason ever met the hangman's noose. Drastic purges and violent assizes were not a part of the Revolution. There was no reign of terror. The record is one of substantial justice done.¹⁰⁹

If we imagine justice as existing only within the courtroom, and as established only by "black letter law," then the Revolution in the North Carolina Piedmont was indeed characterized by moderation. Only a handful of convicted traitors, after all, suffered capital punishment. No doubt the trials and public executions of these Tories were major events in their communities, though no contemporary sources describe them. What the sources from the Revolution reveal is a region riven by civil war, but one in which the administration of justice did not cease. Rather, it took the form of violent retribution that horrified many of its participants as well as contemporary observers. No "drastic purge" appears in the pages of court dockets because it took place not before the bench, but in the homes of accused traitors and in the aftermath of bloody clashes between militias. Often individuals, and not juries, determined the guilt or innocence of accused traitors. While the postwar courts scrupulously adhered to legal forms in trying accused traitors,

¹⁰⁹ Bradley Chapin, "Colonial and Revolutionary Origins of the American Law of Treason," *WMQ* 17, no. 1 (January 1960): 17.

thus averting a massive bloodletting in the wake of the conflict, the real work of reconciliation, and forgiveness for crimes, fell to the people of the region themselves.

CHAPTER VI

“AN EVIL AND PERNICIOUS PRACTICE”: SLAVERY, JUSTICE, ORDER, AND THE POST-REVOLUTIONARY PIEDMONT

In 1800, the North Carolina Court of Conference, the final court of appeal in the state’s legal system, ruled on a criminal case that originated in the North Carolina Piedmont. The details of the case would have chilled contemporary North Carolinians: Sue, an elderly enslaved woman, was convicted by a jury of twelve Person County slaveholders of attempting to poison a local man, Will Cocke, and his family, named in the indictment as Sarah, Polly, and Susannah. According to the indictment, Sue administered a substance “supposed to be Arsenic” to the Cockes with “an intent to Kill.” Cocke, fearing for his safety and that of his family, testified that “from strong evidence corroborated by strong presumptions” he was “well assured that the...poison was prepared by Sue an old Negro wench.” He further claimed that several material witnesses for the state refused to attend court, fearing “threats made by” Sue against him and his family. A jury of twelve “Good and Lawfull men,” all slaveholders, found Sue guilty, and sentenced her to hang on April 14, one week after the trial. John Cates, Sue’s owner, appealed the court’s decision, alleging that the jury, motivated by a “just indignation against the atrocity of such a Crime,” and swayed by the “Clamour of the public voice,” had not “sufficiently weighed the evidence” before condemning Sue. Moreover, Cates pointed out, each of the alleged victims had not only survived the alleged poisoning attempt, but was in “perfect health,” thus making a death sentence contrary to North

Carolina's criminal law code. The petitioner moved for an arrest in judgment and requested, successfully, that the Court of Conference hear the case on appeal.¹

Notwithstanding the popular "clamour" in Person County, Sue's appeal turned on the court's interpretation of North Carolina legislation aimed at regulating slavery. Her attorney, William Duffy, pointed to a 1794 act requiring any sentence passed on a convicted slave to be "agreeable...to the Laws of the Country." Duffy argued that the law denied any court the authority to punish a convicted slave any more harshly than it would a free man found guilty of the same offense. The state contended that the intent of the slave code, particularly a 1741 law entitled "An Act Regarding Servants and Slaves," was clearly to establish procedural differences between trials for free men and the enslaved. Citing the existential urgency of preserving public order in a slave society, the state's solicitor asserted that no subsequent law "restricted that discretionary power" afforded the slave courts in 1741, when the colonial assembly established the basis of the criminal law governing slavery in North Carolina. The "public good," he told the Court, frequently required that enslaved men and women should be punished by death for offenses, which, "if committed by free men, would not be so dangerous in their consequences." Attempted murder, the state claimed, was among these crimes. In short, the legislature had always been "impressed by the necessity of punishing

¹ This account of the case, including the written opinions of each of the Supreme Court justices, is in Duncan Cameron and William Norwood, *Cases at Law Determined by the Court of Conference of North Carolina* (Raleigh: J. Gales, 1805) 54-62. As the title suggests, what would become known as the Supreme Court was called the Court of Conference for a short time in the early nineteenth century, including 1800, the time of Sue's trial and appeal. Like most enslaved people (indeed all mentioned in this chapter) Sue is identified only by her first name in court records.

crimes...committed by [enslaved people] with great severity,” even if it had, at times, also sought to provide a modicum of legal protection for enslaved people. In this reading, maintaining order among the state’s enslaved population trumped any pretense to a natural equality that transcended race. The case divided the three justices—Samuel Johnston, Spruce Macay, and John Louis Taylor—all three slaveholders. Taylor concurred with the state’s position, claiming that a “principle of severe policy” was “absolutely necessary to guard Society against the evil consequences resulting from the condition of slavery.” Slave courts had to administer a particularly harsh brand of justice to maintain the institution of slavery, “and therefore, he wrote, the Person County court was justified in sentencing Sue to death, “however repugnant it may be to my private notions of humanity.” Justices Samuel Johnston and Spruce Macay disagreed. Macay, a prominent Salisbury jurist and one of Rowan County’s largest slaveholders, wrote that the law allowed for discretion only in the degree, not in the kind, of punishment that could be inflicted on the enslaved. Attempted poisoning was, according to the law, a “misdemeanour of an aggravated nature,” one which would have justified corporal, not capital punishment for a white man convicted of the crime. Johnston, too, thought the court had exceeded its authority under the law in passing a death sentence on Sue.² Thus the majority of the court upheld the appeal, and sent Sue back to the Person County court to receive an appropriate sentence short of death.³ The county court imposed a sentence

² Rowan County Census, 1790, *SRNC* 26:1040. In 1790, Macay’s name appears as “Spence Macay” in the census, an error on the part of the census-taker. James S. Brawley, “Spruce Macay,” in *DNCB* 4:119.

³ Cameron and Norwood, *Cases at Law*, 54-62.

of twenty-five lashes on the elderly woman, who was released, or, more accurately, returned to slavery, after the sheriff carried out her sentence. Cocke, still fearful that Sue might do his family a “private injury,” successfully petitioned the court to force John Cates to post a fifty dollar bond for her good behavior. Sue, having become the source of public fear and controversy, subsequently vanishes from the records, almost certainly living out the rest of her days in slavery on the Cates farm.⁴

This case, entitled *State v. Sue, a Negro Woman* in the court records, highlights themes of resistance and agency long familiar to historians of slavery. Sue’s alleged attempts to poison the Cocke family were typical of a recognized form of resistance, a crime that whites punished with brutality.⁵ The evidence does not reveal why Sue tried to poison the Cocks. Perhaps she, like her contemporary Gabriel Prosser about 150 miles to the northeast in Richmond, sought to foment a wider rebellion inspired by the “pervasive language of liberty and equality” that politicized many African American men and women, enslaved and free, in the late 1790s.⁶ Possibly she acted to avenge a personal grievance, some affront by one of the Cocks to her or her kin that was never recorded.

⁴ Person County Court Minutes, July 1800, NCA.

⁵ See John Savage, “‘Black Magic’ and White Terror: Slave Poisoning and Colonial Society in Early 19th Century Martinique,” *Journal of Social History*, Vol. 40, 3 (Spring 2007): 635-662; Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: University of North Carolina Press, 1998), 612-619. As Morgan writes, poisoning was associated with conjuring, giving it a supernatural air in many enslaved communities. Thus the elderly Sue’s apparent facility with poison, as well as her boldness in threatening Cocke, may have given her a great deal of prestige among her peers, another reason why whites in Person County may have found this case so alarming.

⁶ Egerton, *Gabriel’s Rebellion: The Virginia Slave Conspiracies of 1800 and 1802* (Chapel Hill: University of North Carolina Press, 1993), x.

In any case, the records speak eloquently to the anxieties of many slaveholders that the people who prepared their food and drink, and lived among them, might poison them.⁷ Cates's contention that the "clamour of the public voice" swayed the court's decision evokes popular fears of restive slaves, anxieties that inflected popular conceptions of justice and the role of the state in maintaining order. The case also speaks to a legal and political development that continued throughout the revolutionary era—attempts by professional, trained jurists to stamp out the sense of localism that guided much of the administration of law in the Piedmont throughout the Revolutionary era. Historian Laura Edwards has traced the contours of a legal struggle between "state law" and "localized law" in North and South Carolina. State law applied to those who were "legally recognized individuals," while local law "maintained the social order," or "the peace," a more elusive concept shaped by knowledge of local conditions. Over time, this rights-based conception of law superseded, but never fully replaced, localized law, and those who lacked basic rights, especially the enslaved, found themselves increasingly excluded from the protections afforded by the law. These changes were fundamental to the emergence of a criminal justice regime befitting a republican society, a rationalized legal system that did not brook "cells of uncontrolled discretion."⁸ But as Sue's case

⁷ See, for example, *State v. Hannah*, and *State v. Jack*, 1784, in GASR, Senate Joint Resolutions, April-June 1784, NCA. Hannah attempted to poison her owner, John Green, and Jack, enslaved on the plantation of William Eaton, was deemed responsible for "giving out poison" in the area. Both were "hanged immediately" after a summary trial in Halifax, where the conspiracy occurred.

⁸ Edwards, *The People and Their Peace*, 3-8. As Edwards demonstrates, local officials sometimes intervened on behalf of enslaved people condemned for various crimes. For example, in the case of Pleasant, a young enslaved woman from Granville County convicted of arson, a group of citizens, including Pleasant's owner, successfully appealed to the North Carolina governor for a pardon. *Ibid.*, 57. The conflict between legal localism and a new, rational, "scientific" view of the law is also recounted (without reference to slavery) in Lars C. Golumbic, "Who Shall Dictate the Law? Political Wrangling

demonstrates, the permutations of these clashes between state law and localized law were not always so clear. The jury, composed of Person County slaveholders and influenced, perhaps, by popular opinion, condemned Sue to death in order to maintain “the peace.” The higher court, acting from a rational reading of the state’s slave code, protected Sue’s rights—however limited—under North Carolina law. Through their ruling, they asserted the primacy of statutory law over what the Person County jurors had perceived as the exigencies of their community. If the decision of the Court of Conference—even considering the dissenting opinion—evinced a concern for Sue’s essential humanity, it did so in an attempt to regulate and normalize the institution of slavery. This was part of an ongoing legal process that accompanied the expansion of the institution into and within the North Carolina Piedmont in the wake of the American Revolution. The Person County court’s sentence prioritized order—through Sue’s death, they sought to remove one restive slave from their midst and to terrify others into submission. The previous chapters have illustrated the ways that the colonial and revolutionary state sought to impose order on the Piedmont through the enforcement of criminal law, criminalizing large swaths of Piedmont residents who held grievances against the legal, political, and social order. Often, these very attempts, as in the Regulation and the “Tory War,” for example, had, in the short term, exacerbated these conflicts.

In this chapter I examine the development of the institution of slavery in the Piedmont, including its implications for criminal justice and society more broadly. After

between ‘Whig’ Lawyers and Backcountry Farmers in Revolutionary Era North Carolina,” *NCHR* Vol. 73, 1 (January 1996): 56-82.

the Revolution, the growth of slavery was a significant factor in promoting order in the region. “Courthouse rings,” revolutionary committees, and tory-hunting militia parties served as visible agents of repression throughout the Revolutionary era, struggling to impose order on a region divided by diverse economic and social interests that questioned their legitimacy. In the years following the Revolution, serious popular disorder and political instability subsided in the Piedmont. At the same time, African-American men and women became a visible presence in the Piedmont. The region, or at least many areas within it, witnessed a rate of growth in the enslaved population that outstripped that of whites, a development that had important ramifications for the way that criminal justice, disorder, and even political legitimacy were understood and practiced. Slavery was never as important or pervasive in Piedmont society as it was in to state’s coastal plain. But by the first decade of the nineteenth century it was significantly more entrenched than during the Revolution. Other factors were significant, but a focus on the ways that enslaved people were policed, tried, and punished in the criminal courts of the Piedmont hints at slavery’s contribution to a racialized “revolutionary settlement” in one of the new nation’s most restive regions.⁹

This was not, of course, the reason for slavery’s growth—nobody who took part in the institution in the Piedmont anticipated, nor consciously sought, this development. But slavery was an important aspect of the emergence of an increasingly racialized

⁹ The phrase “revolutionary settlement” is used by historian Alan Taylor in *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1810*. Taylor describes the “settlement” that took place in the New England backcountry as part of a broader transformation that he characterizes as “the making of a liberal social order.” (Chapel Hill: The University of North Carolina Press, 1990), 10.

conception of citizenship throughout the new nation. In the Piedmont, this meant that to a large extent, enslaved black men and women replaced agrarian rebels, horse thieves, and Tory partisans as avatars of criminality and disorder. This development amounted to a redefinition of justice, one which, as Sue's case demonstrates, accompanied legal wrangling and legislative action surrounding the treatment of slaves as presumptive criminals.

Legal systems in the Piedmont and throughout the new state of North Carolina strained to reconcile the fundamental contradiction of chattel slavery, an institution that punished the enslaved as humans even as it classified them as property. Yet as one historian has observed in a different context, the salience of criminal law to the institution of slavery was a "pivotal southern social truth." Without the support of the law, particularly criminal law, whites' power over the people they enslaved was essentially chimerical. By the 1770s, this principle was established in Britain in the landmark case of *Somerset v. Stewart*, in which Chief Justice Lord Mansfield described the institution as "so odious" that it could not exist except where it was established by "positive law."¹⁰ Slavery, then, could not exist without criminal law and, more broadly, the criminal justice system. This was true even in areas, like the small and far-flung communities of the North Carolina Piedmont, where slavery was less pervasive than in other regions.

¹⁰ William W. Freehling, *The Road to Disunion, Volume 2: Secessionists Triumphant, 1854-1861* (New York: Oxford University Press, 2007); Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772." *WMQ* Vol. 60, 3 (2003): 471-510.

Crime and Disorder in the Postwar Piedmont

While the disastrous civil war that gripped the region in the early 1780s was a watershed moment, the Piedmont and North Carolina's Appalachian frontier continued to experience significant social and political disorder through the 1790s. A crippling monetary crisis, one which hit the cash-poor Piedmont especially hard, led the state to temporarily relinquish its claims to all territories in the trans-Appalachian West in 1784. This act was the catalyst for a secession movement among the handful of counties that had been organized west of the mountains, a development that culminated with the establishment of the so-called State of Franklin by a group of separatist political leaders led by John Sevier between 1784 and 1788. The State of Franklin, which encompassed eight counties in the Appalachians, was part of the massive tract of lands formally ceded to the federal government in 1790, and eventually became the northeastern counties of Tennessee. Sevier, arrested and pardoned for treason by the North Carolina government during the affair, later became the first governor of the new state of Tennessee.¹¹

Other events revealed internal divisions within the region and reinforced its reputation as a rebellious and lawless backwater. Like western regions throughout the early Republic, the North Carolina Piedmont's residents almost universally opposed—or at least favored significant revisions to—the new Constitution, widely seen as injurious to interest of ordinary people and the power of backcountry elites like Anson County jurist Samuel Spencer, who dominated the Hillsborough ratification convention that refused to

¹¹ Kevin T. Barksdale, *The Lost State of Franklin: America's First Secession* (Lexington: University Press of Kentucky, 2009), 56-58.

ratify the Constitution in 1788.¹² Unlike some other backcountry regions—Pennsylvania in particular—evidence of violent crowd actions in opposition to the Constitution in the North Carolina Piedmont is sparse, limited mostly to disparaging remarks by prominent Federalists about abuses of the people “out of doors.” But the people of the region were almost unanimous in their opposition to the new government, a fact that consistently frustrated eastern politicians, who overwhelmingly supported ratification. Their opposition suggests an emerging unity in the region, a sort of rapprochement between elites like Spencer and ordinary residents with whom their interests were increasingly aligned.¹³ The region continued to expand in political influence in the early Republic. Numerous counties added during and immediately following the Revolution meant that the Piedmont, to the extent that it represented a unified interest, was better represented in the General Assembly than during the 1770s. This development was manifested with the establishment of the permanent capital at Raleigh, in Wake County on the eastern edge of the Piedmont, and the new state university in Orange County.

¹² Jason Stroud, “Samuel Spencer: Anti-Federalist,” in *North Carolina’s Revolutionary Founders*, ed. Jeff Broadwater and Troy L. Kickler (Chapel Hill: University of North Carolina Press, 2019), 199-216.

¹³ Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York: Simon and Schuster, 2010), 401-434. Anti-Federalists, most from the Piedmont westward, dominated the ratification convention of 1788. One year later, North Carolina ultimately voted, over the objection of most Piedmont delegates, to ratify the Constitution. Spencer, like many other backcountry elites, had taken a decidedly anti-populist stance during the Regulation—he was in fact a target of Regulator crowd actions while serving as a clerk in the Anson County court. By 1788, however, he took a stance consistent with what historian Saul Cornell has identified with the “lesser elite” who demanded democratic reforms, and particularly a bill of rights. Saul Cornell, “Aristocracy Assailed: The Ideology of Backcountry Anti-Federalism,” *The Journal of American History*, vol. 76, 4 (March 1990): 1150; Stroud, “Samuel Spencer, Anti-Federalist,” 199-216.

Another factor contributed to the decline of disorder in the region after the Revolution: many disaffected people simply left the region. As discussed in the preceding chapter, hundreds of Loyalists departed North Carolina at various points during the Revolutionary War. Before that, hundreds of disillusioned former Regulators and their sympathizers moved west, settling in the trans-Appalachian region even before the Regulators' final defeat at Alamance Creek in 1771. For example, James Robertson, an Orange County Regulator, established the Sycamore Shoals settlement in the Watauga River valley in 1770, a community that attracted many fellow settlers, including his family. Many others settled in Kentucky as part of a land speculation scheme led by Judge Richard Henderson—the same man who had witnessed the wrath of the Regulators at the Hillsborough courthouse in the fall of 1770. Other erstwhile Regulators leased a small tract of land along the Nolichucky River from the Cherokee Indians in what would become eastern Tennessee—the heart of the Franklin secession movement.¹⁴ The departure of so many troublesome people was a significant turn in the region's political development.

Though the disorder associated with public, political crime—riots in particular—subsided, scattered evidence points to sporadic violence in popular resistance to the federal imposts on whiskey enacted by the federal Congress in 1791. The federal appointee for collecting the tax in the western Piedmont was, according to one source unsympathetic to the “whiskey rebels,” threatened with having his nose mutilated on a

¹⁴ Barksdale, *Lost State of Franklin*, 20; Kars, *Breaking Loose Together*, 217.

grindstone. One witness reported that in Rowan County, a tax collector was “apprehended and carried before one of the Judges” in a crowd action that recalled the quasi-legal protests of the Regulation. These episodes of sporadic violence, and general opposition to the whiskey tax made it, as one historian has observed “virtually unenforceable.”¹⁵ Thus the Piedmont and parts west were not immune from the political turmoil that gripped the western regions of almost every state from Maine to Georgia, and important regional political differences within the state would persist well into the nineteenth century. Still, from the late 1780s through the early 1800s, the region became increasingly integrated into the state, as its interests converged with those of the east, and these political and social divisions did not lead to widespread disorder, as they had from 1765 to the 1780s.¹⁶

Criminal Justice After the Revolution

In some states, the Revolution proved a significant turning point in the administration of criminal justice. Amid the liberal ideological ferment of the era, some reformers, influenced by Enlightenment thinkers like Cesare Beccaria, sought to ameliorate the criminal justice system, viewed by many as a barbarous feudal relic.

¹⁵ Jeffrey J. Crow, “The Whiskey Rebellion in North Carolina,” *NCHR*, Vol. 66, 1 (January 1989): 17-20, 28.

¹⁶ Backcountry turmoil in the early Republic was rooted in a number of complex political and economic issues. While some commonalities existed, specific issues varied from state to state. See Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820* (Chapel Hill: University of North Carolina Press, 1990), 155-207; Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York: Oxford University Press, 1986); Rachel N. Klein, *The Unification of a Slave State: The Rise of the Planter Class in the South Carolina Backcountry, 1760-1808* (Chapel Hill: University of North Carolina Press, 1990), 109-178; and Watson Jennison, *Cultivating Race: The Expansion of Slavery in Georgia, 1750-1860* (University Press of Kentucky, 2012), 89-126.

Reformers in Pennsylvania, for example, took major steps to “reduce the number of capital crimes and put an end to harsh punishment,” in a concentrated effort to liberalize its criminal code. Their efforts centered on the creation of a penitentiary system, the first of its kind in early America. In Virginia, a criminal justice reform bill drafted by Thomas Jefferson failed by a single vote in the Assembly. If enacted, the “Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital” would have eliminated capital punishment for all crimes except murder. In the 1790s, several other states sought to limit capital punishment in an attempt to create a criminal justice system focused on reforming criminal transgressors.¹⁷ North Carolina’s legislature took some steps to reform its criminal code in the aftermath of the Revolution, but progress was generally halting. Among the first crimes reformers addressed was horse stealing, an offense which sent dozens of men to the gallows in the decades before the Revolution. In 1786, the Assembly proclaimed it “inconsistent with the policy of a well regulated government” that horse thieves should be executed. They reduced the sentence of convicted horse thieves to the still brutal, but non-lethal punishment of thirty-nine lashes followed by having the ears nailed to a pillory and severed, a practice known as “cropping.” After this ordeal, convicted horse thieves were branded with an H on one cheek and a T on the other. Even this modest reform was undertaken because the alternative of death led many victims of horse theft to “from compassion forbear to prosecute” and, intriguingly, “juries from the same motive too often acquit.” Just four years later, the Assembly concluded

¹⁷ Jen Manion, *Liberty’s Prisoners: Carceral Culture in Early America* (Philadelphia: University of Pennsylvania Press, 2015), 1; Charles T. Cullen, “Completing the Revisal of the Laws in Post-Revolutionary Virginia,” *Virginia Magazine of History and Biography*, vol. 82, 1 (1974): 84-99.

that this measure was “not attended with the salutary effects intended by the legislature,” and reinstated the death penalty without benefit of clergy for the crime.¹⁸ Not until 1817 were horse thieves again eligible for benefit of clergy, a reform that, historian Guion Griffis Johnson wrote, was considered the “first real victory” for nineteenth century reformers who hoped to liberalize the state’s penal code, considered “cruel and oppressive” even for its time. Despite these efforts at reform, multiple crimes remained capital offenses under North Carolina law well into the nineteenth century, and several others were punishable by dismemberment or whipping.¹⁹ It should be noted here that the eighteenth-century turn from corporal and capital punishment to incarceration and penitential sentences should not be automatically equated with humaneness. For nearly fifty years, scholars, most famously Michel Foucault, have questioned this liberal assumption. Foucault characterized this shift away from the branding iron, the whip, and the public scaffold—each of which situated “the body as the major target of penal repression”—as essentially a turn to “a combination of more subtle, more subdued sufferings.” Under this new regime of punishment, he wrote, “the apparatus of punitive justice” targeted the soul, or the psyche of the condemned, and began to “bite into this bodiless reality.” While some historians have questioned the effectiveness of punitive

¹⁸ Assembly Acts, 1786, *SRNC* 24:795; 1790, *SRNC* 25:74-75.

¹⁹ Guion Griffis Johnson, *Ante-Bellum North Carolina: A Social History* (Chapel Hill: University of North Carolina Press, 1937), 650-651. In initially granting benefit of clergy to horse thieves, North Carolina surpassed Virginia—the revisions recommended by Thomas Jefferson were voted down because a majority of assemblymen wanted to keep the death penalty for horse thieves. As a frustrated James Madison wrote Thomas Jefferson in 1787, the “rage against Horse stealers had a great influence on the fate of the Bill,” keeping the legislators from dispensing with the “old bloody code” that had existed since the early eighteenth century. Madison to Jefferson, February 15, 1787 in *The Papers of Thomas Jefferson*, ed, Julian Boyd (Princeton: Princeton University Press, 1955), vol. 11:152.

justice as an instrument of repression, most have agreed that the transition away from capital and corporal punishment entailed newer, and arguably more repressive, forms of social control.²⁰

Slavery in the North Carolina Piedmont

Such changes as occurred in the administration of criminal justice that occurred in the immediate aftermath of the Revolution were, at least in the short term, ephemeral and scarcely revolutionary. As one legal historian has observed, despite a general agreement that states would maintain a “republican form of government” enshrined in the Constitution, “legislatures made law and courts interpreted law in ways that often conformed more closely to the dictates of social and economic interests than to any explicit requirements of a republican spirit.”²¹ In North Carolina, the “dictates of social and economic interests” increasingly encompassed the institution of slavery. Whatever aspirations to liberalism were held by North Carolina’s revolutionary leaders, none publicly contemplated abolishing the institution. Indeed, the decades following the Revolution witnessed its expansion, both in terms of numbers, of importance to North Carolina’s economy and society, and—the subject of this chapter—territorially, in the sense that slavery became an increasingly prominent, if still not central, feature of life in the North Carolina Piedmont.

²⁰ Foucault, *Discipline and Punish*, 8; Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996), 5; Manion, *Liberty’s Prisoners*; David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971).

²¹ J.R. Pole, “Reflections on American Law and the American Revolution,” *WMQ* Vol. 50, 1 (January 1993): 124.

This was a significant development in the history of a region where the institution had previously been almost nonexistent except in isolated pockets. In the mid-eighteenth century, one historian has written, the “size of slaveholdings” in most of the Piedmont region was “relatively insignificant.” The small fraction of slaveholding households in the region (for example, less than ten percent in Orange County before the Revolution) owned only a few people. Overall, this reflected a number of structural realities in the Piedmont. First, the region was, as has been illustrated in the preceding four chapters, populated mostly by small landholders, and many households possessed neither the cash nor the credit to invest in slave labor. At the same time, the crops raised by the majority of Piedmont farmers—wheat, corn, and other cereals in addition to hogs and livestock—were less labor-intensive than the staples cultivated by enslaved workers in South Carolina and Virginia. Unsurprisingly, then, royal governor William Tryon observed on his travels through the colony in 1765 that “as you penetrate into the Country few Blacks are employed.”²² East of North Carolina’s fall line, enslaved men and women labored on rice plantations near Wilmington, tobacco fields in the north, and in a number of other regionally-specific pursuits, including the manufacture of pitch, turpentine, and timber in the pine barrens along the Cape Fear. Over time, the colony emerged as a major tobacco producer, a development that brought slavery into the Piedmont in significant numbers for the first time. After the Revolution, several counties in the northeastern corner of the region, particularly Orange, Granville, Wake, and Franklin counties, developed a

²² Jeffrey J. Crow, *The Black Experience in Revolutionary North Carolina* (Raleigh: Division of Archives and History, 1989), 6-7.

tobacco-based economy that resembled that of Virginia. Most of the people who worked on these plantations came not directly from Africa or even the Caribbean, but from Virginia, eastern North Carolina, or South Carolina.²³

Like most colonies with significant slave populations, North Carolina's legislators policed their slaves through a parallel, racialized criminal justice system. It was characterized, like slavery in general, by calculated inhumanity. Indeed, as an institution based on the forced expropriation of labor from people, slavery everywhere in the Atlantic World was fundamentally based on the use of violence and terror to preserve order. North Carolina's system of criminal law related to slavery, usually called a "Slave Code," was established in a series of acts passed by the General Assembly between 1715 and 1741. In 1741, in the wake of the Stono Rebellion in South Carolina's Low Country, the Assembly enacted a series of laws designed to control the colony's enslaved population, which was at that time mostly clustered around the Cape Fear and Neuse Rivers and along the colony's northeastern border with Virginia. As historian Alan Watson has written, these laws, like those in other British Atlantic slave societies, had the purpose of "minimizing mobility for slaves, discouraging social interactions (commercial, sexual, and otherwise) between slaves and whites, and reducing the likelihood of violence and the frequency and number of runaways."²⁴ To achieve these ends, the framers of North Carolina's slave code prescribed brutal punishments—mostly

²³ Ibid., 16-17.

²⁴ Alan D. Watson, "North Carolina Slave Courts, 1715-1785," *NCHR* Vol. 60, 1 (January 1983): 24.

corporal in nature—for enslaved people for a number of crimes, and placed severe restrictions on such practices as travelling between plantations, possessing firearms, and perjury. Accused slaves were tried in front of special courts, convened by order of a justice and made up of four slaveowners and three justices of the peace.²⁵ The success of these courts in suppressing the colony's enslaved population is difficult to assess. In many ways, each time the courts became involved in punishing slave criminality represented a crack in the façade of deference and servility that slaveholders attempted to maintain. But no group experienced the full weight of state power in the courts to the degree that enslaved people did.

Before the Revolution, though, this parallel, racialized legal system, and the institution of slavery itself, had yet to take hold in the Piedmont. Indeed, since the region's development in the mid-eighteenth century, the residents of the Piedmont generally had been ambivalent at best toward slavery. Some small farmers feared that the introduction of slavery to the region would recreate the stratified, unequal slave societies that existed along the coastline, dominated by haughty elites who held large numbers of slaves. Most of the small landholders who formed the majority of the region's population, having only recently settled, could not afford this investment in human property.²⁶

Many yeoman farmers in the region opposed slavery on a variety of grounds, believing above all that it represented a threat to their economic well-being and their status. As discussed in previous chapters, many of the settlers in backcountry North

²⁵ Assembly Acts, 1741, *SRNC* 23:191-204.

²⁶ Sensbach, *A Separate Canaan*, 48-50.

Carolina sought what historian Daniel Vickers termed a “competency,” or a “comfortable independence,” and aspired to slave ownership only to the extent that it would further this aim.²⁷ Many backcountry farmers even suspected that the presence of enslaved men and women in their midst would ultimately prove fatal to their economic independence.

Writing before his involvement in the Regulation, Herman Husband worried that settlers in the Piedmont had become “curruped already from that true Christian and Brittish disposition of encouraging our own Poor...falling into that practice of buying Negro slaves by which poor laboring white men are discouraged, and consequently the white people cannot nither encrease nor thrive where the treasure of a country is carried from them to purchase those blacks.” Perceptively, Husband observed that some men in the region were “so stupified as to secretly think and desire an occasion against [Native Americans] to have them destroyed in order to possess their lands with Negroes and have more room to employ their slaves upon.” Husband foresaw that North Carolina’s Piedmont would soon be settled by wealthy men “with their tribes of Negroes settling quarters under overseers.”²⁸

Husband’s fears, like his political beliefs, represented a curious and almost mystical amalgam of religious millenarianism and social criticism. His racially-tinged

²⁷ Vickers, “Competency and Competition: Economic Culture in Early America,” *WMQ* Vol. 47, 1 (January 1990): 3. This is not to argue that “competency” was the dominant paradigm in the region—the very diversity of the region makes such sweeping claims problematic. Still, the promise of cheap land in the region attracted large numbers of white settlers who saw the Piedmont as a place where economic and social independence might be achieved.

²⁸ A. Roger Ekirch, “‘A New Government of Liberty’: Hermon Husband’s Vision of Backcountry North Carolina, 1755,” *WMQ* Vol. 34, 2 (Oct., 1977): 641-644.

visions of a region overrun by slaveholders and their human property were not realized during his life, but certainly some of his fellow settlers came to see slave labor as a means of prosperity. Not long after their arrival in the backcountry in the mid-eighteenth century, the Moravians bolstered their workforce by turning to enslaved labor, and by the time of the Revolution, historian Jon Sensbach writes, slavery was “firmly embedded” in the outlying Moravian settlements. At the same time, the Brethren did not permit individuals in Salem itself to purchase or own enslaved people, which they feared would lead to greed and laziness in their communities. Within Salem and other communities, the church, and not individuals, held slaves.²⁹ Overall, the black population grew in the Piedmont, including the western regions, before the Revolution. But slavery remained, with the notable exception of Granville County in the northeastern corner of the region, less prevalent than even the backcountry regions of South Carolina and especially Virginia. As the first rumblings of the Regulator uprising and the Revolution hit the Piedmont, twenty-nine percent of the population of Granville was enslaved, a figure more than double that of any other county except Orange.³⁰

With the emergence of the Revolutionary crisis of the 1770s, North Carolina Whigs, especially in the east, cast a nervous eye over the colony’s enslaved population. Indeed, as the crisis escalated, the fear that slaves might initiate their own struggle for liberty was among their foremost concerns. Among the charges leveled at royal governor Josiah Martin by Whig propagandists was the false claim that he, like his counterpart

²⁹ Sensbach, *A Separate Canaan*, 73, 79-80.

³⁰ Kars, *Breaking Loose Together*, 22; Kay and Cary, *Slavery in North Carolina*, 222.

Lord Dunmore in Virginia, had “formed a design of Arming the Negroes, and proclaiming freedom to all such as who would resort to the King’s Standard.”³¹ North Carolina’s legislature banned the importation of Africans in 1774, a measure that reflected growing questions about the alignment of the institution with republican values, a desire to conform with the nonimportation movement in response to the passage of the Coercive Acts earlier in that year, and an effort to stem what many whites were coming to see as a disturbing demographic trend.³² Rowan County’s Committee of Safety, in encouraging the ban, resolved that “the African Trade is injurious to this Colony, obstructs the Population of it by freemen, prevents manufacturers, and other Useful Emigrants from Europe from settling among us, and occasions an annual increase of the Balance of Trade against the Colonies.”³³ Herman Husband had voiced these concerns before the Piedmont was even well-settled, and they dovetailed with white fears about a dangerous underclass whose loyalties were suspect as the colony entered into open conflict. As historian Alan Taylor has recently written, whites in the slave societies of the early nineteenth-century Chesapeake were possessed with a “pervasive dread” of their slaves, who they regarded collectively as an “internal enemy who might, at any moment, rebel in a midnight massacre to butcher white men, women, and children in their beds.”

³¹ Martin to the Earl of Dartmouth, *CRNC* 10:43; *Death or Liberty: African-Americans in Revolutionary America* (New York: Oxford University Press, 2009), 69. In the same letter, Martin pointed out the inefficacy of such a strategy in North Carolina, where, unlike its neighbors, the “gross amount of Negroes [would] not be found to exceed ten thousand.” *Ibid.*, 46.

³² *Ibid.*, 56-57. The Assembly soon lifted this ban in favor of a state tax on slave imports, and at least some of North Carolina’s delegates supported the moratorium on Congressional legislation banning the Atlantic slave trade until 1808. *Ibid.*, 244-245.

³³ Resolutions by Inhabitants of Rowan County, August 8, 1774, *SRNC* 9:1026.

This ever-present fear, as Taylor writes, intensified during the Revolution, when elites, outraged and horrified by royal governor Dunmore's proclamation, watched helplessly as thousands of black families and individuals flocked from their plantations to British lines. During the Revolution, many ordinary whites with limited or no slaveholdings came to see their interests as aligned with slaveowners.³⁴ In the North Carolina Piedmont, too, the Revolution proved to be a seminal moment in the development of slavery. It was followed by the numerical growth of the institution, and in time, the enslaved replaced Regulators and Loyalists as another underclass to be policed and disciplined.

Slavery and the Revolution in North Carolina

In 1775, the Pitt County Committee of Safety discovered a "deep laid Horrid Tragick Plan," a widespread conspiracy of the county's large slave population to turn the chaos of the colonial crisis to their advantage. According to one county leader, over forty people in Pitt and surrounding counties in the upper coastal plain were captured and imprisoned in the plot. Dozens more were summarily punished by whippings and other tortures on the spot. On July 8th, 1775, the enslaved rebels planned to "proceed from House to House (Burning as they went) until they arrived in the Back Country where they were to be received with open arms by a number of Persons there appointed and armed by Government for their Protection, and as a further reward they were to be settled in a free government of their own." The incident played on the fears of North Carolina slaveholders that they faced two dangerous populations in the Revolution that might

³⁴ Alan Taylor, *The Internal Enemy: Slavery and War in Virginia, 1772-1832* (New York: W.W. Norton & Company, 2013), 7-52.

unite: the slaves and backcountry malcontents, each manipulated by British agents. As the Wilmington Committee of Safety put it in the midst of the crisis, the fear was that Governor Josiah Martin was “spiriting up the back counties and perhaps the Slaves” in an effort to quell the rebellion. This charge was often repeated, as by one anonymous propagandist in the New York *Constitutional Gazette*, who reported that in North Carolina, “[t]he [Scottish] Highlanders and Regulators are not to be trusted. Governor Martin has coaxed a number of slaves to leave their masters in the lower parts; everything base and wicked is practised by him.” Joseph Reed, a Pennsylvania Whig, wrote George Washington that he feared that disaffected men in the southern backcountry might become “connected to the Hosts of Negroes in the lower Part of the Country.”³⁵ As the Revolution began, then, anxious Whigs saw a dire threat from malcontents in the west and from black men and women in their midst. A “connection” of these two internal enemies, they understood, would likely be fatal to the Revolution.

Alleged slave conspiracies could not have been better scripted to arouse the anxieties of North Carolina’s white population, who understood, even if they could not publicly admit, that the institution of slavery was fundamentally based on violence and terror, which could be visited on the slaveholders themselves in a revolt. As one early antislavery writer put it, the laws of slaveholding colonies and states “promote a murderous disposition in the Master toward their poor Slaves...These worse than Savage-laws, the Slave-holders apprehend necessary for their safety, and to keep their Slaves in

³⁵ John Simpson to Richard Cogdell, July 15, 1775, *SRNC* 10:94-95; Wilmington Committee of Safety to Samuel Johnston, July 13, 1775, *SRNC* 10:87; John Penn, quoted in Parkinson, *Common Cause*, 204; and Joseph Reed, quoted in *ibid.*, 205.

awe.”³⁶ In 1771, Superior Court Chief Justice Martin Howard told a grand jury in Wilmington that “slavery is not only in itself a great evil, but produces the worst effect upon our manners.” Howard specifically criticized the assumption, apparently reinforced by the grand jury’s position in an unknown case, that a white man could kill an enslaved person with impunity. Without calling for emancipation—Howard was himself a slaveholder—the Chief Justice urged a more humane approach to enforcing the boundaries of slavery. Though grand jury charges were without legal standing, Howard’s extraordinary speech against slavery was published throughout the colonies. A Loyalist during the Revolution, he emphasized the hypocrisy of Whigs who proclaimed British tyranny, and yet refused to punish the murderers of slaves as criminals. “Cruelty,” he warned the jurors, “is ever bad policy.”³⁷ Yet slavery, Howard and others acknowledged, was based on cruelty.

For these reasons, with the advent of the Revolution, Whig leaders viewed both the enslaved and many backcountry men as disloyal, potential or actual criminals outside the pale of the law to be surveilled, suppressed, and even destroyed if the circumstances required. The extraordinary, and often self-defeating, efforts undertaken by Whig leaders to suppress suspected Tories during the Revolution were described in the preceding two chapters. During the Revolution, the “Tory” joined enslaved people, whose putative

³⁶ Anthony Benezet to John Wesley, Mary 23, 1774, in Roger Bruns, ed., *Am I Not A Man And A Brother: The Antislavery Crusade of Revolutionary America, 1688-1788* (New York: Chelsea House Publishers, 1977), 315.

³⁷ Don Higginbotham and William S. Price, Jr., “Was it Murder for a White Man to Kill a Slave? Chief Justice Martin Howard Condemns the Peculiar Institution in North Carolina,” *WMQ*, Vol. 36, 4 (October 1979): 593-601.

capacity for violence had evoked existential dread since the beginnings of slavery in the Atlantic World, among the internal enemies that posed an existential threat to the state. That the enslaved would be mobilized for action by designing Tories like Martin or Dunmore was taken for granted by many Whigs, and they understood, amid the chaos of the Revolution, that their slaves would seize the opportunity to claim their freedom.³⁸

At various points during the conflict, white fears seemed well-founded. Many African-American men and women in the Carolinas indeed saw the British as agents of opportunity, if not harbingers of liberty. As historian Gary Nash has written, the British southern campaign accompanied “the greatest slave rebellion in the history of Great Britain’s New World colonies,” as thousands of black families and individuals followed the invading columns through the countryside.³⁹ Slaveowners throughout the southern colonies feared this development, understanding that their slaves might join this massive uprising. Orange County Whig Richard Bennahan, for example, urged one of his overseers at Stagville, one of the largest plantations in the Piedmont, to “make Sarah sleep in the house every night and ensure that another subordinate “keep in Tom.” Bennahan demonstrated a shrewd grasp of the obvious when he wrote that “the negroes

³⁸ As Robert Parkinson has shown, this development occasioned a rhetorical shift among Whigs in other colonies, where Whig newspapers had lionized the backcountry Regulators and condemned Governor William Tryon’s followers as “extortioners, traitors, robbers, and murderers.” Since the colony’s revolutionary leaders had fallen into line behind Tryon at the battle of Alamance, the Regulators and others with suspect loyalties became the criminals. As Parkinson writes, in early 1776, the “rhetorical demands of the present common cause instantly transformed that past.” Parkinson, *Common Cause*, 206-209. In the early stages of the conflict, and especially before the battle at Moore’s Creek Bridge in 1776, the word “Regulator” essentially connoted “Loyalist.”

³⁹ Nash, *The Forgotten Fifth: African Americans in the Age of Revolution* (Cambridge: Harvard University Press, 2006), 31.

have some thoughts of freedom” in the midst of the Revolution. While it is impossible to quantify the extent of this rising in the North Carolina backcountry, evidence suggests that significant numbers of slaves in the Piedmont did, in fact, act on their aspirations to liberty. Some sources reported that up to two thousand black “foragers” from North and South Carolina accompanied Cornwallis’s army as it marched through the Piedmont before turning to Wilmington after the battle of Guilford Courthouse in 1781. Their numbers were bolstered by North Carolina slaves who cast their lot with Cornwallis and his men as they moved through the region.⁴⁰

Whites, slaveholders and otherwise, in the North Carolina backcountry were horrified by this spectacle of black resistance. In Salisbury, for example, Rowan County residents complained to Cornwallis that his campaign against the Continental forces was accompanied by “Negroes Stragling from the Line of March, plund[ering] & Using Violence.” Cornwallis, mindful of public opinion in a region he still regarded as generally friendly, ordered that any such criminal behavior by black soldiers or anyone following the army would be swiftly punished. Moreover, he ordered that “no Negroe shall be Suffered to Carry Arms on any pretence.”⁴¹ The success of Cornwallis’s measures is not clear, but the sight of “black foragers” raiding farms and villages clearly

⁴⁰ Quoted in Peter H. Wood, “‘Liberty is Sweet:’ African-American Freedom Struggles in the Years before White Independence,” in *Beyond the American Revolution: Explorations in the History of American Radicalism*, Alfred F. Young, ed. (DeKalb, Ill.: Northern Illinois University Press), 170-171; Sylvia Frey, *Water From the Rock: Black Resistance in a Revolutionary Age* (Princeton: Princeton University Press, 1991), 163-165.

⁴¹ Antwain K. Hunter, “Politics, Labor, and Rebellions Real and Imagined: Slaves, Free People of Color, and Firearms in North Carolina, 1729-1865,” (Ph.D. diss., Pennsylvania State University, 2015), 26-27.

affected people in the Piedmont countryside. Their very presence represented, as one historian has noted, the strongest possible “image of social revolution.” This image was perhaps all the more powerful in the Piedmont, where slavery was less established than elsewhere in North Carolina.⁴² Amid the chaos of the war, these frightened Rowan County residents, most of whom did not themselves own slaves, witnessed enslaved people as agents of violence and disorder. So, in 1781, did Joseph Hastings, whose home in Orange County was robbed of a “Sum of Gold & Silver Coin, with sundry Garments of Clothes” by several black soldiers from the Maryland Line of the Continental Army. The men were arrested, but freed from the Orange County jail, one historian has concluded, by their white Maryland comrades.⁴³

But if the disorder of the Revolution led to opportunities for enslaved North Carolinians, it also, especially in the small and isolated communities of the Piedmont, exposed them to criminal depredations by whites. Plundering and other crimes against property plagued the Piedmont countryside during the Revolution, especially after Cornwallis’s invasion in 1780-81. For enslaved people, viewed by all parties in the conflict as property, this posed danger, opportunity, and, above all personal turmoil. For example, “two women and a Child” enslaved on the plantation of John Strother in Orange County were drawn into the backcountry chaos soon after the British invasion of the Piedmont. These three people, whose names were not recorded, were the property of Amos Thompson. John Hinton, a Wake County man, accused Thompson of joining an

⁴² Crow, “Slave Rebelliousness and Social Conflict,” 88.

⁴³ *Ibid.*, 68.

“party of armed men” that robbed him of “two negroes and other valuable effects” in a raid in March of 1781. Hinton and his own armed party came to Strother’s house and carried off the two slaves in retaliation for this offense. The pair was “immediately sold” upon the order of the Hillsborough Court, and Martha Thompson, apparently the wife of Amos, sued for the recovery of damages for their theft. The two people sold subsequently vanish from the records, and there is no way to know their fate after their sale.⁴⁴ Of course, slavery itself was founded upon the abduction of people and the expropriation of their labor. But the Revolution provided a means by which opportunistic men might reap illicit profits in other ways, and enslaved families and individuals were caught up in the cycle of destructive raids, plunder, and retaliation that engulfed the region in the early 1780s. In 1782, for example, one soldier deserted from the Continental line in Virginia to join a group of outlaws in “stealing Horses [and] Negroes” along the border of North Carolina and Virginia. Several members of this gang were indicted for carrying away a “negro girl,” the property of William Collett. James Howard, of Anson County, claimed that he had been paid to transport two “mulatto children...to their father” when he was apprehended with them. In 1779, the Salisbury court made a hue and cry for Joseph and William Abbot, accused of fleeing the county with a young enslaved man named Simon, abducted from Virginia.⁴⁵ Typically, the records treat the crime as a simple theft of

⁴⁴ Assembly Joint Committee Report, 1781, *SRNC* 16:78.

⁴⁵ Deposition of Joseph Gear, 1782, HDSC Criminal Action Papers; Examination of James Howard, Salisbury District slave records, 1771-1779; Hue and Cry for Joseph and William Abbot for theft of Negro, 1779. As discussed in earlier chapters, a “hue and cry” was a legal proclamation that required citizens to assist in the apprehension of a fugitive. In effect, the hue and cry was the predecessor to slave patrols in the Piedmont.

property, albeit one serious enough that in 1779, in the midst of the Revolution, the Assembly legislated against it, stipulating death without benefit of clergy for anyone who, by “violence, seduction, or any other means,” took an enslaved person with the intent to sell them. Citing the law in a later case, Superior Court judge Alfred Moore described the circumstances surrounding the passage of this law:

The law was passed in “turbulent times, when a practice prevailed of carrying slaves away under the pretence that they belonged to the public as confiscated or that they were owned by disaffected persons...They were sometimes carried off privately or by stealth, at other times openly and by violence.”⁴⁶

The bill also stipulated a £100 fine for any person who persuaded a servant or a slave to run away from their masters without the intent to sell.⁴⁷ Aside from acknowledging wartime crimes against “disaffected persons, the law reveals an assumption on the part of whites that the enslaved themselves were incapable of deciding on their own to depart their plantations, that they could only be persuaded to run away by “seduction” or violence. Indeed, the theory of slavery rested on the presumption that blacks were by nature submissive, and the law, as well as other statutory protection for slaves also suggests that their status as property was the strongest protection against crime by whites. In at least some cases, though, enslaved men and women had their own motives in these incidents. If the language of the law evoked planter anxieties about their slaves being led astray by artful and designing men—a concern, as we have seen, that was not limited to

⁴⁶ *State v. Hall* (1799) in *North Carolina Reports*, Clark, ed., 168-170.

⁴⁷ Acts of North Carolina Assembly, *SRNC* 24:220.

blacks—it also suggested that enslaved men and women might decide for themselves that departing with one of these men was preferable to their current situation. Above all, for authorities in the Piedmont, the actions of Cornwallis’s black foragers and the gangs of white bandits who ran off with enslaved people were twin dangers that highlighted the urgency of policing the growing enslaved population. These concerns became even more urgent late in the war, and in fact lingered after the Revolution.

For some enslaved men and women in the Piedmont the Revolution represented an irresistible opportunity for violent resistance against their oppressors. In 1775, Toney, an enslaved man belonging to Walter Sharpe, a Rowan County planter, stood trial for burning Sharpe’s house. Two justices and four Free holders heard Toney affirm under examination, in “clear and manifest Terms” that he had set hire to Sharpe’s “Dwelling house” without “any reasons prompting him thereto but his own evil mind.” Faced with a death sentence, the clerk recorded, Toney “saith Nothing,” standing silently as the court valued him at 80 pounds proclamation money before sentencing him to hang.⁴⁸ Beyond its context in the Revolution, Toney’s case—in particular his silence before the court—has received attention from several scholars. One historian has interpreted Toney’s arson, and subsequent defiance before the court, as “inward-directed rebelliousness” that was “self-defeating and even self-destructive in its intention.” More recently, historian Robert Olwell has described Toney’s “feeble effort” at making his case, and his “fatal silence”

⁴⁸ Rowan County Court Minutes, 1773-1786, NCA.

when asked if he could offer any reason why he should not be executed.⁴⁹ The sparse record of the trial makes it impossible to do more than speculate on Toney's motives for committing the crime. There are examples of arson in Piedmont records, and for oppressed people seeking retribution or justice, as Marjoleine Kars has written, the crime was "tempting precisely because it was hard to prove." In addition, arson, like poisoning, could send a potent and terrifying message to powerful men.⁵⁰ In any case, Toney's willingness to confess, and his silence when confronted with his sentence, should not be assumed to be an act of nihilism, and merits more analysis inasmuch as it offers a glimpse of the power dynamics immanent throughout criminal proceedings for the enslaved. It was standard procedure to offer convicted felons of any race or social station the chance to say something in their defense before they were sentenced. This was usually a legal formality, an opportunity for the convicted criminal's counsel to move in arrest of judgment pending an appeal, or for the defendant to request benefit of clergy in the hopes of receiving a lesser sentence. Benefit of clergy was a privilege not often afforded to the enslaved, and, having confessed to the crime, Toney perhaps hoped to simply secure a quick execution—he was no doubt well aware that slaves convicted of criminal offenses were sometimes burned alive in the 1770s and even later. His silence at this moment in his trial probably says more about his (accurate) perception of the summary nature of slave proceedings than it does about his state of mind, or his inability

⁴⁹ Watson, "North Carolina Slave Courts," 28; Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740-1790* (Ithaca, NY: Cornell University Press, 1998), 92.

⁵⁰ Kars, *Breaking Loose Together*, 60.

to articulate a persuasive defense. If his actions at trial were “self-defeating,” they took place in a juridical context where it was nearly impossible for the accused to win. As Olwell writes, in these proceedings, “a slave whose submission was thought to be wanting could expect little mercy,” and slaves, dealt a “very weak hand,” had to “play their few cards with great care.”⁵¹ Like the district and county courts, slave courts were convened infrequently during the chaos of the Revolution in the backcountry. Still, Whig leaders took steps to control the enslaved population of the region, who they regarded, like Tories, with fear and suspicion. These anxieties during the revolutionary era led to the creation of regular slave patrols in Piedmont towns and counties. Long employed in slave societies, slave patrols would become a regular feature of law enforcement in the region after the Revolution.⁵²

Historian Gregory Nobles has noted the emergence of an “emancipationist sentiment” in the Revolution that contributed to the “loosening of colonial-era restrictions on manumissions.” In North Carolina, Quakers, who began emancipating their slaves,

⁵¹ Free African-Americans, at least, were eligible for benefit of clergy after the Revolution. John Hope Franklin, *The Free Negro in North Carolina, 1790-1860* (Chapel Hill: University of North Carolina Press, 1943), 87. For a definition and brief summary of the history of “benefit of clergy,” see Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 5th ed. (St. Paul, Minn.: West Publishing Co., 1979), 144; Olwell, *Masters, Slaves and Subjects*, 93. Overall, few historians have attempted to sketch the “anatomy” of slave trials in the colonial and Revolutionary South, probably because their ad hoc character meant that they differed by locale. Some of the trials described in this chapter, for example, took place in county courthouses, others in the homes of local justices of the peace.

⁵² Alan D. Watson, ed., *African Americans in Early North Carolina: A Documentary History* (Raleigh: Office of Archives and History, 2005), 134.

were the most visible and active agents of this short-lived development.⁵³ In a 1777 act, the General Assembly denounced manumissions as an “evil and pernicious Practice...to be guarded against by every friend and Wellwisher to his Country,” and stipulated that only slaves whose owners could demonstrate their “meritorious service” before the county courts were eligible for freedom. Enslaved men and women freed unlawfully could be jailed under this act and sold at public auction by county sheriffs. The law also forbade the longstanding practice of allowing the enslaved to hire themselves out. Framed by the Assembly as a wartime measure, the act was ostensibly intended “to prevent domestic insurrections.” It serves as an example of the lengths the legislature would go to in order to promote order at the expense of both the liberties of enslaved people and of liberal notions of private property, and it was a deliberate reaction to the emergence of “emancipationist sentiment” on the part of the state’s dissenting sects. Throughout the Revolution and in the years that followed, Quakers from throughout the state unsuccessfully petitioned the legislature to legalize the emancipation of slaves by repealing the law, and Piedmont Quakers, in particular those in the New Garden Meeting in Guilford County, actively promoted emancipation in defiance of the law, or at least the spirit of the law.⁵⁴ The New Garden Friends, largely composed of recent migrants from

⁵³ Gregory H. Nobles, “Historians Extend the Reach of the American Revolution,” in Nobles and Alfred F. Young, *Whose Revolution Was It? Historians Interpret the Founding* (New York: New York University Press, 2011), 156.

⁵⁴ Acts of North Carolina General Assembly, 1777, *NCCSR* 24:14; Petition of Committee of Quakers, Eastern Quarter, April 26, 1782, General Assembly Session Records, NCA. The 1741 act regulating slavery is discussed earlier in this chapter. It included the “meritorious service” requirement, but this does not seem to have been frequently enforced, and it appears that the efforts of the Quakers, the ideological threat posed by the egalitarian rhetoric of the Revolution, and the perception of a restive enslaved population drove the Assembly to rein in the practice.

Pennsylvania, joined their counterparts in the northeastern corner of the colony, who had been established there since arriving from Virginia in the late seventeenth century. Their continuing efforts outraged the Assembly. A committee tasked with hearing Quaker petitions responded angrily to the Quakers, charging that “setting their Slaves free, at a time when our...Enemies were endeavouring to bring about an Insurrection of the Slaves, was highly criminal and reprehensible.”⁵⁵ Quakers were already suspect due to their pacifism, and their association with black aspirations to freedom was “criminal.” In general, the Quakers sought to circumvent legislative attempts to criminalize manumissions through a number of means. They retained lawyers to defend against legal harassment, broke their own rules against ownership by reuniting enslaved families through purchase, allowed enslaved people to keep the crops they raised, and continued to press the issue of manumission in county courts by claiming “meritorious service” for even very young people.⁵⁶ Other dissenting religious groups, most notably the Baptists, harbored sincere reservations about slavery, and free blacks and enslaved people often attended their meetings. Still, neither of these groups publicly opposed the institution, and as discussed in the first chapter, their meetings also served as agents of social control—often along racial lines—punishing their members for a variety of transgressions that did not make it before the courts. The Sandy Creek Baptist meeting in Randolph County, for example, demonstrated the limits of their belief in the spiritual equality of all men when

⁵⁵ Hiram H. Hilty, *By Land and By Sea: Quakers Confront Slavery and its Aftermath in North Carolina* (Greensboro: North Carolina Friends Historical Society, 1993), 21-25.; Crow, *The Black Experience in Revolutionary North Carolina*, 63.

⁵⁶ Hilty, *By Land and By Sea*, 1-33.

they disciplined “Negro Cezar...for atempting to Preach [to whites] with oute leave.”⁵⁷ As with the Moravians, evangelical opposition to slavery in North Carolina was limited. Though they frequently ministered to black men and women, most Revolutionary-era evangelicals in the North Carolina Piedmont did not grapple meaningfully with the issue of “whether or not the wholesale enslavement of their fellow Christians was morally objectionable,” a question that most future evangelicals throughout the South would answer in the negative.⁵⁸

Most white North Carolinians viewed the new state and nation in racialized terms, and they agreed that black aspirations to liberty during the Revolution were to be contained. Despite multiple requests from Continental officers, Whigs in the Carolinas refused to recruit blacks for service against the British, viewing black mobilization as a threat to public disorder.⁵⁹ The North Carolina legislature offered “one prime slave between the age of fifteen and twenty years” and a two hundred acre freehold on the state’s frontier to any man who enlisted in the North Carolina Line of the Continental Army and served for three years. This act preceded the better-known “Sumter’s Law” enacted in South Carolina—a plan, initially proposed by General Thomas Sumter, to give “one grown negro” to any man who would enlist as a private soldier in the state’s militia.

⁵⁷ Henry S. Stroupe, “‘Cite Them Both to Attend the Next Church Conference:’ Social Control by North Carolina Baptist Churches, 1772-1908,” *NCHR* Vol. 52, 2 (April 1975), 158.

⁵⁸ Charles F. Irons, *The Origins of Proslavery Christianity* (Chapel Hill: University of North Carolina Press, 2008), 43.

⁵⁹ General Nathanael Greene pointed out that the use of black soldiers would “afford...double security” to South Carolina if they were enlisted in the Continental Army, but South Carolina’s leaders perceived this proposal as a veiled (and possibly deliberate) threat to the racial order of the state by Greene, a Rhode Island Quaker. Parkinson, *The Common Cause*, 554.

The enslaved people given as bounties were to be taken from Loyalist estates, and the revolutionary governments of Virginia and Georgia enacted similar policies. These measures appealed to what one historian has termed the “great...demand for slaves among backcountry troops” often manifested in the plundering of enslaved men, women, and children from ostensibly Loyalist households and plantations.⁶⁰ Little evidence survives to indicate that large numbers of enslaved men were given as bounties to enlistees in North Carolina, but the intent of the policy demonstrates a desire on the part of North Carolina lawmakers to exploit the manpower potential of the colony’s enslaved population in a way that portended the least possible disorder. This remained a paramount concern for the state’s leaders after the Revolution.

Historian Robert Parkinson has recently written that a fundamental “tragedy” in the post-Revolutionary period was that “tens of thousands of African Americans and Indians had seen the Revolutionary War as an opportunity,” one for which many had undertaken great risks and sacrifice to pursue.⁶¹ Like the people in the backcountry who had opposed—or simply shown insufficient enthusiasm for—the Revolutionary cause, they became a criminal class. But unlike many of these former Tories, there would be no reconciliation, and no pathway to membership in society, for blacks in North Carolina. For them, the Revolution confirmed white fears of slaves as a potentially dangerous underclass to be policed and regulated even as their labor was exploited.

⁶⁰ Klein, *Unification of a Slave State*, 107; Acts of the Assembly, *SRNC* 24:338.

⁶¹ Parkinson, *The Common Cause*, 661.

In North Carolina, as elsewhere in the post-revolutionary South, the state's material and social interest in maintaining slavery generally trumped whatever lukewarm egalitarian impulses were harbored by revolutionary leaders. At the same time, slavery was bound up with attempts to reform the state's legal code inasmuch as authorities hoped to establish a uniform, rational code of law befitting a republican society. In the wake of the Revolution, the Assembly enacted a number of laws aimed at regulating slavery in the state. Many of these laws simply amended or updated former legislation, but the general thrust of the Assembly's efforts was to establish an updated criminal code of slavery. These laws included bench trials for non-capital criminal cases against slaves, statutes criminalizing interactions between free blacks and enslaved people, stricter regulations on slaves travelling from county to county, and laws banning the importation of adult slaves from either the Caribbean or Africa. Slaves were also forbidden to meet for the purpose of "drinking and dancing" without passes from masters, who were discouraged from sanctioning these gatherings.⁶²

Slavery underwent a steady, if modest, expansion into the Piedmont at a time when the state was beginning to take more control over the legal process in general. This met with some opposition from locals, including local court officials who believed that local knowledge was an important part of the administration of justice. The friction between these two ideas of justice took place on a number of fronts—one, for instance, that is invisible in the records is the way that perceptions of loyalty may have swayed

⁶² John Haywood, *A Manual of the Laws of North Carolina: Arranged Under Distinct Heads in Alphabetical Order* (Raleigh: J. Gales and W. Boylan, 1808).

judges in criminal trials as well as manumission appeals, which were heard by county courts and turned on the court's interpretation of "meritorious service." One historian of North Carolina's slave courts has written that this legislative change took place amid a "growing concern for the equitable judicial treatment and protection of slaves," a consequence at least in part of the "egalitarian spirit of the Revolution." Under North Carolina's revised slave codes, enslaved people accused of capital crimes were afforded "statutory protections that were substantially equal to those enjoyed by whites." The establishment of jury trials for enslaved people accused of capital crimes was one especially significant reform, as was the law regarding capital punishment that was germane to Sue's case at the beginning of this chapter.⁶³ These changes in procedure certainly benefited enslaved suspects. Still, accused slaves stood trial in a legal setting that remained weighted against them from the start. As one historian has written, the role of the criminal justice system for slaves was to "produce absolute submission," while the rationale for the parallel system for whites was "to protect individuals and society from errant behavior."⁶⁴ The efforts at rationalization in the post-Revolutionary era did not change, nor did they aim at changing, this fundamental distinction. In North Carolina, as in most other slave states, criminal proceedings against the enslaved were not held in regular district or county courts, but rather in special courts convened on a case-by-case basis. They were judged not by their peers, but by a panel selected from area slaveholders. Slaves called before the court could testify against other enslaved men and

⁶³ Watson, "North Carolina Slave Courts," 35.

⁶⁴ Spindel, *Crime and Society*, 15.

women, but not against whites, and not on their own behalf. Until 1821, enslaved men and women were not allowed to testify against free people of color.⁶⁵

Overall, then, the state's legislators established, notwithstanding egalitarian ideals and limited reforms, a legal and social structure that featured tighter policing and regulation, harsher punishments, and fewer avenues for freedom for the enslaved. As one late nineteenth-century scholar of slavery in North Carolina put it, in the absence of emancipation, North Carolinians struggled to imagine any other possibility than placing more strictures on the slaves and free blacks:

It came as a logical consequence of the conviction that the future development of Southern society as well as the safety of the Southern people demanded that slavery should be perpetuated. Before this iron necessity every impulse to humanity...was made to fall. Now and again some sharp-eyed pro-slavery advocate would discover some way by which it was thought the slave could lift himself out of slavery, and the way would be as promptly closed up.⁶⁶

This was the broader context in which slavery expanded and became more central to Piedmont society. While the Revolution likely did not hasten the expansion of slavery in the region, local and state experiences during the conflict put both slavery and the enslaved at the center of attempts to establish order.

⁶⁵ Franklin, *The Free Negro*, 82. These trials were sometimes held in conjunction with county or district courts. The ad hoc nature of the trials, however, speaks to the urgency of policing the enslaved population.

⁶⁶ John Spencer Bassett, *Slavery in the State of North Carolina* (Baltimore: The Johns Hopkins University Press, 1899), 10.

Slavery in the Post-Revolutionary Piedmont

In 1790, the year of the first federal census, North Carolina was the third most populous state, with over 393,000 people. In that year, over 100,000 of this population was enslaved. By the next count in 1800, the total population had grown to just over 478,000, with 133,296 in bondage—enslaved people thus made up just under 28% of the state's overall population, a two percent increase from the first federal census in 1790. Most of these people still lived and labored in the lower Cape Fear, where the economy centered on the large-scale production of a variety of staple crops, especially rice, and the production of naval stores, a highly labor-intensive pursuit.⁶⁷ The port city of Wilmington in particular also featured a large free black community. Enslaved people made up around ten percent of the population of most Piedmont counties in 1790. Rowan, for example, home to the economic and political nexus of Salisbury, had a population of just under 16,000 in the 1790 census, 1,742 of whom were enslaved. Only Granville County, on the Virginia border, featured a black population on the same scale as the eastern counties at nearly thirty-eight percent.⁶⁸ If not exactly virgin soil for slavery, then, most of the Piedmont had never been fertile ground for the institution to take root.

Despite these relatively low numbers, slavery steadily grew, both in terms of numbers and in terms of its significance to the social fabric of the region. This was part

⁶⁷ James M. Clifton, "Golden Grains of White: Rice Planting on the Lower Cape Fear," *NCHR* Vol. 50, 4 (October 1973): 365-369.

⁶⁸ *Heads of Families at the First Census of the United States take in the year 1790: North Carolina* (Washington, D.C.: Government Printing Office, 1908), 8; *Return of the Whole Number of Persons Within the Several Districts of the United States* (Washington City: Apollo Press, 1802), 73, 76.

of a broader structural process that predated the Revolution—the region’s incorporation into Atlantic capitalist networks—that contributed to disorder and turmoil in the region. Nearly every student of the North Carolina backcountry has perceived that the region, in the words of historian Marjoleine Kars, attracted settlers with “different and mutually incompatible expectations.” Many, as discussed in the first chapter, sought a “competency,” or self-sufficiency and independence. Some, however, “speculated in land on a large scale,” and hoped to amass great wealth by exploiting enslaved labor. Indeed, many small farmers increasingly saw the ownership of slaves as a means—perhaps the best means—to achieve economic independence.⁶⁹ The region’s experience in the revolutionary era had been colored in part by these differing interests, and while it is too simplistic to say that slavery’s expansion marked an elite victory in a class struggle, the institution was bound up with the rapid and far-reaching social and economic changes of the period that troubled many ordinary people in the region.

After the Revolution, the expansion of slavery aligned with the economic expansion of the region, and the increased political integration with the east. This process occurred at exactly the time that historians have identified as pivotal in the development of both slavery and citizenship in early America. As slavery became more prominent, through natural increase and by people moving to the region with slaves, race for the first time became a fundamental marker of belonging in the Piedmont, transcending religious difference, class distinctions, and other sources of division from the revolutionary era.

⁶⁹ Kars, *Breaking Loose Together*: 25-26.

This was a product of several factors, but it was especially influenced by white fears of a restive and potentially dangerous black population. It was also consistent with a broader national trend recently emphasized by historians, who have argued that a white republic was born in opposition to the claims on freedom made by African Americans.⁷⁰ In the North Carolina Piedmont, this happened in the context of a black population that was increasingly visible, and therefore troubling, for many people in an area where slavery had always been decidedly marginal. In this region, after the chaos of the Revolution, whiteness became a crucial marker of citizenship and of belonging to society.

Whites in the Piedmont harbored attitudes about race and class that were fairly typical of British North America by the mid-eighteenth century. One Salisbury man, for example, insulted a prominent local figure during an argument by calling him a “Negro Fucker,” further asserting in front of listeners that, unlike his supposed better, he had “never fucked a Negroe.”⁷¹ A Baptist congregation in Person County disciplined one of its members for “rusling [i.e., wrestling] with a negro...for money.”⁷² But the revolutionary experience intensified white fears of the African American men and women in their midst. We have already seen how the Piedmont was generally seen, both by eastern elites and powerful backcountry officials, as a lawless backwater, a perception

⁷⁰ For the most recent example of this historiographical development, see Parkinson, *The Common Cause*.

⁷¹ Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, N.Y.: Cornell University Press, 2002), 152.

⁷² Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: University of North Carolina Press, 1998), 416.

seemingly confirmed by the Regulation and the near-total anarchy of the Revolution. In these conflicts, first agrarian malcontents and then Loyalist sympathizers and partisans were viewed as dangerous criminal classes warranting repression by authorities in the name of preserving order. In the wake of the Revolution, as the legislature cracked down on slavery and the enslaved, and the courts in the Piedmont punished the enslaved, a new criminal class emerged, one delineated by race. Slave courts, patrollers, and the other accoutrements of oppression appeared with increasing regularity in the region to enforce the boundaries of slavery and race more broadly. The region, to be sure, continued to witness public disorder instigated by whites. Criminal court records contain a few mentions of “riot” and other public disturbances, including at courthouses, and crimes such as horse theft, endemic to backcountry regions everywhere remained urgent challenges to authorities in the region. But the terror evoked by perceived disorder among the enslaved was a different matter. Policing the region’s enslaved population became an increasingly important priority, one that led to measures unprecedented in the Piedmont.

The experience of Mecklenburg County in the southern Piedmont, one of the fastest-growing in the region, was typical of the region. From 1790 to 1800, the enslaved population of Mecklenburg grew from fourteen to nearly nineteen percent of the overall population. That of Orange County in the middle of the state, increased nearly four percent to over one-fifth of the overall population, and Granville County’s grew nearly five percentage points to forty-two percent.⁷³ Most of the Piedmont experienced a steady

⁷³ *Return of the Whole Number of Persons Within the Several Districts of the United States*, (Washington City: Apollo Press, 1802), 73-76.

growth in the population of enslaved people, who became increasingly important to the region's economy and society. As these numbers suggest, much of the region could not be described as a "slave society" in which slavery was the foundation for the economy, society, and culture. Rather, in the aftermath of the American Revolution, it was a "society with slaves," with enslaved labor as one aspect of a diverse labor system, and with enslaved people themselves constituting a relatively modest percentage of the population. But as historian Ira Berlin has written, "neither mildness nor openness defined societies with slaves," societies in which, paradoxically, white commitment to maintaining a racialized social order tended to be even more pronounced:

Slaveholders in such societies could act with extraordinary brutality precisely because their slaves were extraneous to their main business. They could limit their slaves' access to freedom expressly because they desired to set themselves apart from their slaves.⁷⁴

As the numbers further reveal, the Revolutionary era witnessed significant divergence among different subregions within the Piedmont, as the counties along the border with Virginia came to resemble that state's Piedmont region demographically and socially. But throughout the region, local officials harbored anxieties about the region's growing black population, one they assumed had become radicalized by the chaos and the ideological ferment of the Revolution. Despite the growth of slavery in the region, though, the

⁷⁴ Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in America* (Cambridge, Mass.: Harvard University Press, 1998), 8.

prosecution of enslaved criminals and the rise of slave patrols and other repressive institutions seem out of proportion with the relatively small enslaved population.

Slavery in the Piedmont, 1783-1806

In 1784, shortly after the Treaty of Paris sealed the end of the Revolutionary War, a trial in Granville County seemed to confirm white fears that enslaved people might foment a revolution of their own. Quillo, an enslaved man owned by James Hunt in Granville County, stood trial for leading a remarkable conspiracy that aimed at more than simply gaining freedom for its participants. According to the testimony of James, another enslaved man, Quillo sought to create a black democracy in the heart of tobacco-rich Granville County:

Quillo told him [James] that he intended to give a treat to the black people at Craggs branch [in Granville County] where he intended to hold an election for the purpose of choosing Burgesses, Justices and Sheriffs, in order to have equal Justice distributed so that a weak person might collect his debt, as well as a Strong one, and that Quillo advised him to stand as a candidate (which he refused) that said Quillo told him he had a Barrel of Cyder and some Brandy with which he intended to treat and that if he [James] would do nothing else, he might sit down and drink, and that he intended to apply to Col. Smith and W. Young to hold said Election.⁷⁵

This account is striking for a number of reasons, but especially because it reveals Quillo's expertise in the forms of early American politics. "Treating" was the practice, *de rigeur* among elites in the early American South, of supplying alcohol to ordinary people at public gatherings, usually militia gatherings and court days. Unsurprisingly, the ritual

⁷⁵ Examination of James, April 19, 1794, Granville County Miscellaneous Records, Insurrection Charges made against Slave Quillo, NCA.

was a central feature of elections, which frequently coincided with these social events. There, in the words of one historian of colonial Virginia, a candidate who hoped to win public office “treated” voters to demonstrate their “liberality toward their poorer neighbors.”⁷⁶ For an enslaved man to plan to cultivate political support through treating was a crime against the social and political order of Granville County, one which mocked the carefully-constructed boundaries of class and race. Moreover, according the testimony, Quillo intended to “apply” to local officials (Samuel Smith and William Young, both Granville militia officers and justices of the peace) to hold his election. Other testimony in Quillo’s case alluded to a broader movement, one which recalled the cycles of appeals, remonstrances, meetings, and violence that accompanied the Regulation in the North Carolina Piedmont. Gowen, like Quillo “the property of James Hunt,” testified that Quillo hoped to choose men to “Act as Justices and Sheriffs,” to “enable all the Negroes to have equal Justice in collecting the monies due to them.”⁷⁷

Quillo himself testified that he was one of several enslaved men who would stand as candidates in the election, which was postponed when Giles, a slave on a neighboring farm, pointed out that those who attended the election would likely be implicated in the burglary of a local man identified as Mr. Smith, whose “Sellar...was lately broke open and liquor stolen.” As Quillo continued to plan the election, he heard a rumor from Jack, from neighboring Person County, that many enslaved people in his county “had risen...in

⁷⁶ Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: University of North Carolina Press, 1982), 111-114.

⁷⁷ Examination of Gowen, April 19, 1794, Granville County Miscellaneous Records, NCA.

such force that they intended to make their way...to Williamsburgh [Virginia] or any other place they choosed to go to.” Quillo, as a political leader among slaves in Granville County, would join them with his followers, and the group would continue on their way, resolved, the justice who took his testimony recorded, to “murder all who stood in their way, or opposed them.”⁷⁸ Quillo claimed that Tom, a “Mulatto Slave” apparently residing on a nearby plantation, first broached the idea of an election, but several other enslaved witnesses pointed to Quillo as the ringleader. Little evidence survives for the fate of Quillo’s would-be followers—one man was accused of falsely testifying at the trial, but the records of his trial apparently do not survive. A Granville County jury convicted Quillo of “consulting, advising, and conspiring...to rebel or make insurrection,” and the court quickly condemned him to the gallows in May of 1784.⁷⁹ As one historian who has recounted Quillo’s case has observed, his democratic aspirations represented dangerous pretensions to political agency by blacks, unmistakable evidence to slaveholders in the Piedmont that “the contagion of liberty...released by the American Revolution was dangerously spreading to the ‘wrong’ people.”⁸⁰ North Carolina’s elites had always been conscious that the Piedmont was full of the “wrong people”—squatters, Regulators, Tories, and others—that agitated, through their actions, for a different society. Indeed,

⁷⁸ Testimony of Quillo, April 19, 1794, Granville County Miscellaneous Records, NCA.

⁷⁹ State v. Quillo, May 1794, Granville County Court Minutes, NCA.

⁸⁰ Jeffrey J. Crow, “Slave Rebelliousness and Social Conflict in North Carolina, 1775 to 1802,” *WMQ* Vol. 37, 1 (January 1980): 79-80. Quillo’s story is also told in Crow, Paul D. Escott, and Flora J. Hatley, *A History of African Americans in North Carolina*, 2nd ed (Raleigh: Office of Archives and History, 2011), 43-44.

Quillo's evocation of "debt" and "equal Justice" suggest that he was not simply acquainted with the forms of the politics of the Piedmont, but with the substance of the grievances of backcountry people. Quillo and his confederates, however, were different—they could not, unlike Regulators and Tories, be absorbed back into Piedmont society. Indeed, they were never really part of this society; they were set apart by their race as a potentially dangerous underclass.

Quillo's abortive insurgency is remarkable in another sense—it is well-documented by the standards of the late eighteenth century. Surviving records of slave trials are scattered and diffuse, in no small part because the proceedings were not always held in conjunction with regular court sessions. Records are often loose, rather than included in court minute dockets and other papers, and the conclusions that can be drawn from these materials are somewhat impressionistic. Still, in the wake of the Revolution, criminal proceedings against enslaved people appear across county and Superior Court records with a regularity that attests to the expanding presence of slavery in the minds of political leaders in the Piedmont.

The majority of the cases before the courts in the late eighteenth century were property crimes. Simon, for example, was hanged in Mecklenburg County for stealing a "Horse creature as well as several articles of clothing, including a "Blue coat, a Cottin homespun gown, a Black Petticoat and a pair of Breeches" from the home of James Rogers. Rogers raised a party to pursue the man, and he was captured. Simon, who claimed to be the property of Thomas Wade, an influential Anson County politician and landowner, was condemned by the testimony of a "Negro fellow" who belonged to

Rogers, and who swore that he saw “a black Man come out of the House with his Masters Coat” and other articles of clothing. Simon “hallowed” to the man, apparently inviting him to join him, but he refused, choosing to notify Rogers instead. Stealing clothing was a common form of resistance on the part of the enslaved in the Piedmont and elsewhere—William McCulloch, a Mecklenburg County slaveowner, took out a warrant against Dick for breaking into his home and stealing “three Linning shirts one or more pairs of overals one peticote & Short womeans Gound with Sundry other Artickles Both of Men & womens wear or Clothing.”⁸¹ Dick was later convicted, apparently on the testimony of McCulloch alone, and hanged. His case seems typical. According to one historian who surveyed the slave court records from 1715 to 1785, clothing, food, and money were the objects of the majority of slave thefts, which made up the majority of crimes committed by bondsmen. Numerous runaway slave advertisements from the Piedmont note that their subjects absconded with clothing and cash.

Another case heard by a special court in Mecklenburg County in the spring of 1793 is illustrative of the workings of slave courts for the decade following the Revolution.⁸² Three enslaved men—Ben, Sam, and Joe—stood accused of stealing a ten gallon barrel of whiskey and a horse from Frederick Shaver, a local farmer who owned one slave.⁸³ Ben was the property of Robert Philips, while Sam and Joe belonged to

⁸¹ *State v. Simon* (1793), Mecklenburg County Miscellaneous Records, 1759-1959, NCA; Warrant for Dick, February 4, 1791, *ibid*.

⁸² This case occurred before the law mandating a jury trial for the enslaved had taken effect.

⁸³ According to census records, Shaver oversaw a household that included another adult white male, five white males under the age of 16, and four white females in addition to the single enslaved person that he owned. He thus exemplifies a common characteristic of slavery in the backcountry—that of the

Ezekiel Black. Their trial took place in the home of Richard Mason, a slaveholder who lived in Charlotte, and, in accordance with North Carolina law, the accused men faced a jury of Mecklenburg slaveholders. Sam, “after examination,” confessed that he was involved in taking the horse. Joe, “after some punishment being inflicted” on him, showed officials where the three had taken the whiskey. The jury found each of the three men guilty and sentenced them to “fifty Lashes well laid on” at the public whipping post. Their owners had to compensate Shaver for the stolen whiskey, which was apparently never recovered. The trial demonstrates several aspects common to many slave cases. It was held at a court of oyer and terminer, convened as an ad hoc body to hear the trial. It was held not in a courthouse, but in a prominent slaveholder’s home, a setting that could have communicated the power dynamics of the trial even more effectively than a public building. Enslaved witnesses were encouraged—compelled by force, even—to testify against each other, and confessions were obtained by threats and torture.

In 1793, however, the General Assembly sought to provide a modicum of due process to enslaved defendants, passing a law mandating a jury trial for slaves facing criminal charges. Juries in these trials had to be composed of slaveholders, but courts were “required to appoint counsel to appear before and in behalf of the prisoner” if the

small slaveowner. In most As historian Daniel L. Fountain has recently suggested, the salience of slavery in the North Carolina Piedmont is understated by historians who simply measure the percentage of the region’s population that was enslaved. While there are no records that enable us to sketch out the internal dynamics and structure of the Shaver household, it nevertheless was a “slaveholding household” in which a total of eleven white people were connected economically and otherwise to an enslaved man. Mecklenburg County Census of 1790, *NCCSR* 26765; Daniel L. Fountain, “A Broader Footprint: Slavery and Slaveholding Households in Antebellum Piedmont North Carolina, *NCHR* Vol. 91, 4 (October 2014): 407-444.

owner of the accused could not be located.⁸⁴ This was a significant reform, one which required courts to at least observe the formalities of criminal justice in slave trials, and some enslaved defendants were, in fact, acquitted.

Still, whatever halting gestures legal reformers made toward impartiality, criminal justice for African Americans in the Piedmont remained as brutal as the institution of slavery itself. In May of 1786, an enslaved man named Lott, the property of Revolutionary War hero Francis Locke, stood trial for assaulting and attempting to rape Margaret Todd, apparently a white woman. Lott, one of Locke's fourteen slaves, was convicted, and suffered "one hundred Lashes well laid on his bare back." After this, the convicted man was to stand in the pillory and have "one ear nailed to the post and cut off." While whipping remained a common penal measure until well into the nineteenth century, one hundred lashes was an especially brutal punishment—no court included in this study ever administered more lashes to any other convicted felon, white or black. Moreover, after his ears were cropped, Lott spent the rest of his days scarred and disfigured, if not physically broken, from his nightmarish afternoon in front of the Salisbury Courthouse.⁸⁵ It is likely that his value as an apparently young man spared Lott the death penalty for what was an "attempted" rape, but it was an article of faith among whites that the torture of enslaved criminals was the most effective means of maintaining order among slaves. As one historian has written of lynchings in the early twentieth century, these public displays of power over the bodies of enslaved men and women were

⁸⁴ "An Act to Extend the Right of Trial by Jury to Slaves," *Laws of North Carolina*, 1793.

⁸⁵ *State v. Lott, a Negro Slave*, May 1786, SDCAP 1790-1798 (broken series); NCCSR 26:1031.

“infrequent and extraordinary,” but “held a singular psychological force, generating a level of fear and horror that overwhelmed all other forms of violence” that African Americans were exposed to.⁸⁶ If the state as a whole made efforts at reforming the criminal code for the enslaved, the violent spectacles of public punishment that characterized slave societies, while never commonplace, appeared with increasing frequency in the Piedmont throughout the postwar period, bloody reminders of the racial boundaries of Piedmont society. In 1801, for example, the Rutherford County court recorded that an enslaved man convicted of rape was hanged and decapitated, his severed head “stuck on a pole as a terror to Evil doers and all persons in like cases offending.”⁸⁷ As one turn of the century historian of North Carolina observed of nearly every aspect of the legal structures of slavery, “every impulse to humanity...was made to fall.”⁸⁸ Despite attempts to rein in its excesses, the criminal justice system faced by slaves remained bloody and brutal, aimed more at instilling terror than dispensing justice, as North Carolina’s backcountry became, increasingly, a slave state.

Of course, many supposed transgressions by enslaved men and women were not punished (nor even punishable) under law. Rather, they were dealt with through corporal punishment by masters and overseers, which only occasionally appear in the records. In 1771, Moravian minister George Soelle, for example, described consoling a conscience-

⁸⁶ Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940* (Chapel Hill: University of North Carolina Press, 2009), 1.

⁸⁷ Quoted in Johnson, *Ante-Bellum North Carolina*, 650.

⁸⁸ John Spencer Bassett, *Slavery in the State of North Carolina, Johns Hopkins University Studies in Historical and Political Science*, 17th Ser., 7-8 (Baltimore: Johns Hopkins Press, 1899), 10.

stricken man distraught after beating a young enslaved girl to death in the Wachovia countryside. The man may have suffered divine sanction for his offense, but at the time, it was no crime under North Carolina law—only in 1774 did the Assembly criminalize the murder of slaves. In that year, the Assembly established a sentence of one year’s imprisonment for the “wilful and malicious killing” of one’s own slave. If the victim was the property of another household, the guilty party was also liable for the value of the victim. Repeat offenders faced hanging, but the law did not apply to anyone who shot an “outlawed” slave (indeed, the Assembly made provisions to compensate the owners of slaves killed in these circumstances) or to anyone who killed an enslaved person in the process of providing “moderate Correction.”⁸⁹ In 1791, in a remarkable statement, the Assembly denounced “the distinction of criminality between the murder of a white person, and one who is equally a human creature” as “disgraceful to humanity,” and stipulated that anyone convicted of murdering a slave would face death without benefit of clergy. Still, no whites received the death penalty for this offense in Piedmont courts. Over the following two years, John Sturgis and Margaret Burrow faced trials in Hillsborough for the “murder of a Negro.” Burrow was acquitted, while Sturgis’s case was likely dismissed.⁹⁰ In 1801, when John Boon was convicted, also at Hillsborough, of murdering an unnamed enslaved person, the Court of Conference unanimously

⁸⁹ Assembly Acts, 1774, *SRNC* 975-976.

⁹⁰ Sensbach, *A Separate Canaan*, 82-83; Hillsborough District Superior Court Minute Docket, 1792-1793, NCA.

overturned the verdict on the grounds that the 1791 law was “not certain enough in its language.”⁹¹

Though the region always maintained a vast white majority, the courts in the Piedmont became increasingly active in enforcing the boundaries of race. Laws banning interracial sexual conduct were almost never enforced against men, though the courts frequently placed responsibility for the care of children born of white fathers and enslaved mothers. Courts routinely ordered that “mulatto” children should be bound to men who could support them. In 1785, for example, the Guilford County court bound Lucy Valentine, a “mulatto girl aged seven years,” to Captain Thomas McReynolds until she reached the age of eighteen. Tabitha Barnet, a “base born mulatto child” born to Phebe Burnet, a white woman, was bound as an infant to Robert Kimmins, under whom she was to “learn the art and calling of a spinner” until the age of twenty-one. As a condition of the bond, Kimmins gave security not to leave the county with Tabitha, presumably to protect her from sale.⁹² This practice was not unique to enslaved children. Dozens of children born out of wedlock, or who had become orphans, were bound to adults who promised to support them and, in most cases, to teach them a trade, such as carpentry or weaving. In the August 1782 session of the Guilford County court alone,

⁹¹ Hillsborough District Minute Docket, October 1801, NCA; John Louis Taylor, *Cases Determined in the Superior Courts of Law and Equity of the State of North Carolina* (New Bern: Martin & Ogden, 1802), 246-261.

⁹² Minutes, Guilford County Court of Pleas and Quarter Sessions, May 1785, NCA. The practice of binding out enslaved girls as weavers and spinners was not completely unknown in the Piedmont, but the vast majority of girls bound were free, and either orphans or born out of wedlock. Johanna Miller Lewis, *Artisans in the North Carolina Backcountry* (Lexington: University Press of Kentucky, 1995), 98-104.

four “Base Born” children and one orphan were bound out to responsible adults. Often the fathers of children born to unwed mothers posted so-called “bastardy bonds” to, as the court specifically recorded in the case of James Wilson of Guilford, “keep the...child clear of any expense to the County.”⁹³ Robert Kimmins, ruled by the court to be the father of Tabitha, a “base born mulatto child” born to Phebe Burnett, promised to support the child and teach her the “art and calling of a spinster.”⁹⁴

Most whites in the Piedmont never articulated an aversion to slavery as a moral issue, but rather feared that the presence of black slaves would devalue—literally and symbolically—the labor of white men. This concern, common among backcountry whites, was the motive for state legislation that barred enslaved men and women from direct economic competition with whites. Slaves in the tobacco counties of Halifax, Northampton, Bute, Granville, Orange, Chatham, Edgecombe and Wake were forbidden by law from cultivating tobacco for the market. The owner of any enslaved man caught raising the crop “for his own benefit” paid a fine to his county court, and the slaves themselves faced corporal punishment for their transgression.⁹⁵ The Moravians, ever

⁹³ Minutes, Guilford County Court of Plea and Quarter Sessions, August 1782. Technically, bastardy, or more accurately, fornication, was a crime in North Carolina, but as in so many other places, the law was more honored in the breach than the observance. While the courts did occasionally prosecute fornication and adultery cases, the state’s main concern in bastardy cases was to save the state the expense of providing for the children of these unions. North Carolina, or at least the Piedmont, lacked institutions, like the Overseers of the Poor in colonial Philadelphia, to care for such children, though judging by the volume of bastardy cases in the county courts, North Carolinians engaged in extra and pre-marital sex as often as did their urban counterparts. See Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006), 63-77.

⁹⁴ Minutes, Guilford County Court of Pleas and Quarter Sessions, May 1785.

⁹⁵ *SRNC* 23:925; Crow, *Black Experience*, 14-15.

anxious about disorder in their communities, also sought to control the movement and activities—especially economic activities—of black men and women in their midst. The town of Salem, decrying the “illicit buying and selling being done by negroes,” mandated that these merchants prove permission from their owners before they offered their wares. “In general,” Moravian leaders decreed, “there should be less conversation with the negroes, as that naturally has no good result.”⁹⁶

Some towns and counties in the Piedmont sought to tightly regulate their presumably restive enslaved populations in other ways unknown before the Revolution. Charlotte, where fifty-seven of the 122 townspeople were enslaved, serves as an example. In 1792, the Mecklenburg County Court noted that “many Injuries have Arisen...from Sundry Negroes within this County Possessing and riding Horses.” The court empowered the Mecklenburg sheriff to seize and auction off all “Horses Mares and Geldings which he may discover to be the property of...slaves.”⁹⁷ Just a few months later, the same court cited the “Injuries...to the owners of Slaves by their being permitted to range at large during Publick meetings as well as at other times in the town of Charlotte.” The court authorized constables to apprehend any enslaved man or woman who failed to produce a pass on demand.⁹⁸ The records do not reveal what “injuries” were done to the “owners of Slaves” by such activities, but these measures, common in towns like Wilmington and

⁹⁶ Ibid., 28.

⁹⁷ Minutes, Mecklenburg County Court of Pleas and Quarter Sessions, July 1792.

⁹⁸ Ibid, April 1793. In the absence of city governments, county courts throughout the eighteenth century were generally responsible for enacting regulations at the local level.

Charleston, South Carolina, point to increasing insecurities on the part of white slaveowners in some backcountry towns like Charlotte.

These anxieties were rooted in the visibility of black men and women in towns, if not the pervasiveness of slavery itself in the region overall. Blacks, enslaved and otherwise, comprised a relatively small, but growing percentage of the population of most Piedmont counties. But almost every town in the region had a proportionally large slave population. For example, the 1800 census takers counted 645 men, women, and children in Salisbury, the largest town west of Hillsborough. Over three hundred of the town's population were enslaved people, with five others listed as "other free persons," i.e. free blacks. Forty-seven people lived in Rockford, a diminutive community in Surry County, twenty-three of whom were slaves, and in Charlotte, almost half of the 122 residents were enslaved. For those who lived in towns, and for the farmers who visited these towns to transact business, attend court, worship at church, and sell their produce and animals, African-American men and women, and slavery in the abstract, were a visible and important presence.⁹⁹ As one historian of slavery has written, enslaved people were "highly visible—often troublingly so—to their white contemporaries," and this observation was as true in the small towns of the North Carolina Piedmont as in other

⁹⁹ 1800 Census, 76. This trend holds true throughout the region. Even the far-flung mountain towns, scarcely more than crossroads, had disproportionately large enslaved populations. In 1800, for example, thirteen of Asheville's thirty-eight residents, for example, were slaves, as were 41 of Lincolnton's 92 inhabitants. These percentages are similar to towns in areas where slaves formed a larger share of the overall population. Over half the population of the town of Halifax, for example, was enslaved, a slightly higher percentage than in the county as a whole. Wilmington had the highest enslaved population—67% of the town's nearly 1700 inhabitants were slaves. Overall, however, Piedmont towns had much larger African American populations proportionate to the countryside than did towns in the east.

regions more commonly associated with large slave populations.¹⁰⁰ Exacerbating white concerns was the fact that Mecklenburg County's enslaved population as a whole grew by about twenty percent from 1790 to 1800, while the white population remained unchanged. In 1790, the vast majority of enslaved people in Mecklenburg lived in small slaveholding households. Of the over four hundred households that reported owning slaves in the first federal census, only twenty-nine included more than ten. Only four heads of households—Thomas Polk, William Polk, John Springs, and John Davidson—owned more than twenty, one threshold for “planter” status recognized by historians.¹⁰¹

While the overwhelming majority of white households in the region did not own slaves, ordinary white men were enlisted in a variety of ways in policing the boundaries of the institution. Most sheriffs were men of power and influence in their communities, but many constables were not, and few of these officials owned many slaves. These, however, were often the men tasked with guarding the jails, carrying public tortures, executions, and other punishments of enslaved people. Charles Wood, a non-slaveholding constable, was allowed 40 shillings of public money by the Rowan County court for “executing the judgment of a special Court called for the Trial of Jack, a Slave.”

¹⁰⁰ Peter H. Wood, “‘Liberty is Sweet:’ African-American Freedom Struggles in the Years before White Independence,” in *Beyond the American Revolution, Explorations in the History of American Radicalism*, ed. Alfred F. Young (DeKalb, Ill: Northern Illinois University Press, 1993), 150.

¹⁰¹ Mecklenburg County Census of 1790, *SRNC* 26:737-772. Especially in regions like the Piedmont, households with 10 or more slaves had a substantial amount of wealth, and therefore the distinction of “planter” has little meaning. The word was used loosely as a sociolegal category in early North Carolina—some who did not even own slaves were categorized in that way in the court records. Even by eastern North Carolina standards, Thomas Polk and John Springs were very substantial slaveholders, and anyone with more than ten was a considerably wealthy planter in the Piedmont. For differing criteria for “planter,” see Peter Kolchin, *American Slavery: 1619-1877* (New York: Hill and Wang, 1993), xii.

One county official was reimbursed a small sum for “finding wood to Burn” a condemned man named Cato.¹⁰² By the early nineteenth century most counties and towns in the Piedmont had regular slave patrols, usually composed of yeomen farmers. Chatham County, for example, employed several patrollers in each militia district. Under a law passed in the midst of the Revolution in 1779, these men—appointed by county courts—were paid 20 shillings each for their service over the course of a single year, in addition to exemption from such obligations as a 40 shilling tax, jury duty, public road work, and even militia service. These patrollers were empowered to search and detain slaves, enter their dwellings in search of weapons, and question whites they encountered on public roads. Counties were not required to establish slave patrols—indeed some seem to have thought the traditional hue and cry sufficient to deal with runaways and other crimes associated with slavery. Still, the slave patrols became a regular feature of Piedmont life, one that was explicitly aimed at suppressing the enslaved.¹⁰³ Despite these efforts, many found the patrollers, who often carried out other duties, inadequate. One worried townsperson wrote the *Raleigh Register* in 1802 that the capital city of Raleigh lacked a “sufficient number of patrollers...to discover and suppress fire and robbery” in general.¹⁰⁴ White anxieties were not easily assuaged by the presence of patrols.

¹⁰² Rowan County Court Minutes, August 1785, *SRNC* 26:1040; General Assembly Session Records, Joint Standing Committees, Committee of Claims, November 1768, *NCA*.

¹⁰³ Hadden, *Slave Patrols*, 37-40.

¹⁰⁴ *Raleigh Register and North Carolina State Gazette*, May 4 1802 (Raleigh: Joseph Gales, 1802). Quoted in Hadden, *Slave Patrols*, 57. Town leaders usually chose their own patrollers, independent of those appointed by the courts who patrolled the countryside.

The appearance of slave patrols was an innovation for post-Revolutionary Piedmont communities, but eastern counties and towns had long accepted the exigencies of maintaining slavery. Public funds had, since the early eighteenth century, supported the institution throughout North Carolina. Slave owners were compensated when their slaves were executed, severely maimed, or when they were shot and killed while being apprehended by patrollers, militia, or law enforcement officials. The value of slaves who perished as a result of a court-sentenced punishment was determined by the courts themselves, while a joint Assembly committee of claims placed a value on enslaved outlaws or runaways killed while being apprehended. The committee of claims also compensated sheriffs or other officials for expenses incurred while apprehending slaves and other criminals, as well as a fee for their executions. In practice, this amounted to state subsidization of an institution that disproportionately benefited the wealthy, and it was a significant government expenditure. So expensive, in fact, was compensation that during the French and Indian War, a conflict that left the colony nearly destitute, the Assembly devised a brutal, cost-saving measure. They substituted castration for death in all capital cases except murder and rape, providing £3 for treatment and twenty shillings for the sheriff charged with carrying out the grisly sentence.¹⁰⁵ In 1768, the Assembly

¹⁰⁵ Marvin L. Michael Kay and Lorin Lee Cary, "'The Planters Suffer Little or Nothing': North Carolina Compensations for Executed Slaves, 1748-1772," *Science and Society*, Vol. 40, 3 (Fall 1976): 288-297. The law was repealed in 1764, probably because, as Kay and Cary argue, slaveowners decided that their interests were better served by replacing slaves whose rebelliousness led to their execution rather than to continue to "continue dealing with them." In any case, as historian John Spencer Bassett, quoted by Kay and Cary, wrote in his study of slavery in colonial North Carolina: "It would be charitable to suppose that the public mind revolted at its [the law's] disgusting severity." That is, the Assembly altered the punishment more out of utilitarian concerns than ethical ones. *Ibid*, 298-299, 299n.

approved more than £750 in compensation for slaveowners whose slaves were executed, and the practice of compensation continued after the Revolution. With the outbreak of the Revolution, and the violence used to police the state's enslaved population, the issue took on new urgency. Citing, implicitly, the need for cruelty in dealing with rebellious slaves in a time of Revolution, the Assembly nevertheless acknowledged that "many poor widows, orphan children, and other good citizens" might be deprived "of their chief, and perhaps only support" when slaves were executed. The law therefore required that one half of the condemned person's value would be paid to the owner out of public funds.¹⁰⁶ In 1786, the Joint Committee of Claims approved almost £300 in reimbursements for the executions of enslaved people, including two men from the North Carolina Piedmont—Bob and Simon, from Guilford and Rutherford County respectively. Benjamin Hicks, the owner of Simon, received £50 for his loss. As Kay and Cary write, under the criminal law of slavery in North Carolina, "black slaves were terrorized; owners, especially the affluent, were subsidized; and the middle and lower class whites disproportionately financed the sorry spectacle."¹⁰⁷ In this way, and in many others, the state provided material support for the violence deemed necessary to maintain order in a society with slaves. While no records exist of popular disaffection with the policy, the Assembly frequently revisited the issue of compensation. In 1786, the state's legislators passed a bill acknowledging that masters and overseers drove many enslaved criminals to crime by

¹⁰⁶ Acts of the North Carolina Assembly, 1781 *SRNC* 24:383.

¹⁰⁷ GASR, Joint Standing Committees, Committee of Claims, November 1786-January 1787, *NCA*; House Minutes, 1786, *SRNC* 20: 9; Kay and Cary, "The Planters Suffer Little or Nothing," 306.

their “cruel treatment.” In 1796, however, the Assembly partially reinstated the practice. Under the new law, county courts could opt to reimburse up to two-thirds of the assessed value of executed slaves out of a special tax levied on the owners of slaves. Only owners who had treated their slaves with a “humanity consistent with [their] situation” would be eligible for reimbursement. However, as the law and subsequent court rulings made clear, “humanity” consisted of feeding and clothing the enslaved, not forbearing from whippings, beatings, and other forms of punishment. In *State v. Sue*, cited at the beginning of this chapter, Judge Spruce Macay wrote that “cruel treatment” signified “withholding from them [slaves] the necessities of life.” Significantly, reimbursement reform measures seem to have been aimed at placating western counties, which, having much smaller enslaved populations, resented being taxed to compensate eastern slaveholders.¹⁰⁸ For convicted slaves who faced sentencing, compensation stripped them of any protections their monetary value might afford them. It also meant that, after receiving their sentence, they faced a final indignity only experienced by people classified as chattels, listening silently as the court certified their monetary value before condemning them to death. Each valuation then formed the basis for compensation from the county courts.

Just as before the Revolution, poor whites in the region continued to attempt to profit from slavery by kidnapping enslaved men, women, and especially children for sale. In 1785, Benjamin Ledbetter, a yeoman farmer in Chatham County, stood trial on the

¹⁰⁸ Laws of North Carolina, 1796 (New Bern: Arnett & Hodge), 28-29; Johnson, *Ante-bellum North Carolina*, 498; *State v. Sue*; Bassett, *Slavery in the State of North Carolina*, 14.

charge that he had undertaken to “entice and persuade a certain negro slave named Toney, the property of Jesse Nevil to leave his...owner...with the intent then and there feloniously to steal the said slave.”¹⁰⁹ In the decades following the Revolution, both the Hillsborough and the Salisbury Superior Courts frequently heard cases relating to “negro stealing,” including one man indicted for stealing and selling at least three separate people in the area.¹¹⁰ So pervasive was the practice in the North Carolina Piedmont that many owners feared that runaway slaves would be taken up by these criminals. When Jacob, a twenty-two year old man, fled slavery with “a great quantity of fine clothes, and a large sum of Money,” his owner David McAdaw of Guilford County thought it necessary to include a warning against “harbouring or carrying him off,” which would, he wrote in an advertisement in a Halifax newspaper, subject them to the “penalty prescribed by law.” Indeed, slaveowners often suspected that the men and women who ran away from them did so with the complicity of white men, whose motives were often unclear. In 1799, for example, Joseph Baber of Rutherford County advertised a substantial \$40 reward for Moses and Jim, two young men who, the subscriber believed, were “in the possession of a Joseph Tribble, who frequently passes for Colonel Tribble.” Baber offered an additional fifty dollars for the apprehension of Tribble “so that the operation of Law may be laid on him for feloniously taking” the two men.¹¹¹ In 1793, the

¹⁰⁹ *State v. Benjamin Ledbetter*, HDSC Criminal Action Papers, 1785.

¹¹⁰ See, for example, *State v. Fox*, 1804; *State v. Joseph, Zedekiah, and John Street*, 1806, in Hillsborough Superior Court Minute Docket; *State v. Benjamin Clements*, HDSC Criminal Action Papers, 1768-1806.

¹¹¹ Advertisement for Jacob, *North Carolina Journal* June 26, 1797, (Halifax, N.C.); Advertisement for Moses and Jim, *North Carolina Mercury and Salisbury Advertiser*, June 27, 1799,

same year the United States Congress enacted a federal fugitive slave law, the North Carolina legislature decreed the death penalty for any white waterman who helped a runaway slave flee the state. White assumptions about black agency led some to question whether they, as human beings, could be stolen in the same way that other goods and chattels were. In 1799, the state Court of Conference resolved this question, ruling that “larceny may be committed of a slave” despite the fact that they possessed “the faculty of reason.”¹¹² On the other hand, the state also took steps to rein in the practice of kidnapping and enslaving free black men and women. While the Piedmont had a very small free black population, the crime was not unknown in the region—James Merrill of Salisbury was convicted in 1804 of “taking a free person to make a slave of him,” and was sentenced to death by hanging.¹¹³

Perhaps even those North Carolinians most heavily invested, literally and otherwise, in the enslavement of other human beings understood that their practices ran afoul of Revolutionary ideals. But notwithstanding any republican scruples, the institution expanded apace—beyond the Piedmont—in the aftermath of the Revolution. After ratifying the Constitution in 1789, North Carolina’s Assembly ceded the so-called

(Salisbury, NC, Francis Coupee), both in NCA. McAdaw may have worried that area Quakers, whose position on slavery was well-known in the late eighteenth century, would shelter Jacob. From a slaveholder’s perspective, both antislavery religious groups who sheltered escaped slaves and gangs of outlaws who kidnapped enslaved men, women, and children were moral equals. Each was a criminal who took the property of slaveowners. The motives of the mysterious “Colonel Tribble” likewise remain obscure, but whether he colluded with Moses and Jim to gain their freedom, or, more likely, hoped to sell them for profit, he was in the eyes of the law a felon.

¹¹² *State v. Hall* (1799) in Clark, ed., *North Carolina Reports*, Nov. 1778-Dec. 1804, 169.

¹¹³ *State v. Merrell*, SDSC Minute Docket, 1802-1809.

Southwest Territory (most of Tennessee) to Congress, but only with the stipulation that “no regulations...by Congress shall tend to emancipate slaves.” Following the cession, “thousands of slaves” were brought into the region, where they labored on the farms that dotted the fertile river valleys of east and central Tennessee.¹¹⁴ The settlers in the region, some of whom came from the North Carolina Piedmont, never seriously questioned that slavery would spread into the region.

Throughout the Revolutionary period, the Moravians regarded the possibility that North Carolina officials might associate them with Loyalism to be “unendurable,” an existential threat to their communities.¹¹⁵ They also, during the Revolution, faced accusations by unfriendly assemblymen that they had “harboured runaway negroes.”¹¹⁶ No people in the Piedmont were more careful to guard their reputation, especially during the Revolution, and they sought to persuade their neighbors that they were no Tories. But the accusation that they had harbored runaways was equally damaging to the Moravians, who were, of course, far from abolitionists. In the aftermath of the Revolution, as slavery

¹¹⁴ Richard Peters, ed., *The Public Statutes at Large of the United States of America: from the Organization of the Government in 1789, to March 3, 1845*, Vol. 1 (Boston: Charles C. Little and James Brown, 1845), 108; Barksdale, *Lost State of Franklin*, 167-168. This act followed a 1784 attempt to cede the lands, one which led to the creation of the State of Franklin. The 1784 Act was repealed by the North Carolina Assembly amid the controversy.

¹¹⁵ Salem Board Minutes, 780, *MR IV*, 1607.

¹¹⁶ Bagge Manuscript, *MR II*: 754; Certainly, important and visible differences between slavery in the Moravian towns and throughout the rest of the Piedmont probably caused onlookers to question their commitment to the institution. To cite one example relevant to criminality, rigid Moravian strictures involving sexual behavior probably meant that enslaved women in Salem and elsewhere did not have to fear the sexual abuse and rape so often inflicted on their counterparts elsewhere. But enslaved men and women among the Moravians experienced the torture of the lash, and despite (or perhaps because) of the Moravian emphasis on family and community, slaves seen as recalcitrant and disobedient could be separated from their loved ones through sale. Sensbach, *A Separate Canaan*, 134-135.

became more entrenched in the region, enslaved people joined, and eventually replaced, Tories, horse thieves, squatters, and avaricious court officials as a criminal class outside the bounds of citizenship. Disputes over the ways that criminal justice was administered in the region had always centered on the proper targets of criminal justice. Backcountry rioters claimed that their actions were a legitimate response to the extortions and other crimes committed by corrupt court officials. Even some Revolutionary leaders recognized that Tory insurgents were frequently motivated by a desire for retributive justice against abusive Whig partisans. In the Piedmont, these groups had become the targets of the region's criminal justice system, which acted both as an agent of repression and a mechanism by which they could be reincorporated into Piedmont and North Carolina society. By the late eighteenth century, as enslaved populations grew, many of these disputes over the nature of justice in the region had given way to an agreement that African-Americans, and particularly enslaved people, represented a threat to order in the region. As one historian has written of early South Carolina, "whites felt that even meager numbers of slaves still constituted a threat" that necessitated repressive measures.¹¹⁷ The expansion of slavery into the Piedmont did not erase the class divisions in that region, nor did it entirely paper over the region's political differences with the eastern counties. These divisions persisted well into the nineteenth century, outlasting even the Civil War.¹¹⁸ The courts thus played a major role in tying the interests of an increasingly slave-holding Piedmont to the state.

¹¹⁷ Hadden, *Slave Patrols*, 14.

¹¹⁸ See, for example, Charles C. Bolton, *Poor Whites in the Antebellum South: Tenants and Laborers in Central North Carolina and Northeast Mississippi* (Durham, NC: Duke University Press,

To survey the interaction between enslaved people, the courts, and the law in the Piedmont is to witness the transformation of a region from a “poor man’s country” whose social and economic structures resembled those of western Pennsylvania, into a slaveholding society. While large slaveholdings remained relatively scarce in the region, slavery was increasingly prominent and visible to its people. It grew in the aftermath of the Revolution, a seminal event that led many whites to question the compatibility of the institution with the republican society they envisioned. But black aspirations to liberty during the Revolution increased white suspicions and fears of disorder. Indeed, in the short term, local interests often were at odds with reforms that were themselves halting and half-hearted. In this way, the concept of justice—always shaped by who was deserving of inclusion in society—was strongly influenced by the spread of slavery in the region. Criminal justice, more than ever, was synonymous with maintaining order, and to the extent that state-sanctioned justice aligned with local interests in suppressing the enslaved population, it had the support of local juries and justices.

1994), and Keri Leigh Merritt, *Masterless Men: Poor Whites and Slavery in the Antebellum South* (New York: Cambridge University Press, 2017), 1-37. At the same time, the intensity of pro-slavery Southern responses to the class-based critique of slavery registered by Hinton Rowan Helper, a native of the North Carolina Piedmont, in the 1850s (one which echoed that of Herman Husband, quoted earlier in this chapter) demonstrates the extent to which many southern politicians--and not simply proslavery ideologues—prized white unity. Hinton Rowan Helper, *The Impending Crisis of the South: How to Meet It* (New York: Burdick Brothers, 1857); David Brown, *Southern Outcast: Hinton Rowan Helper and the Impending Crisis of the South* (Baton Rouge: Louisiana State University Press, 2006), 124-188.

CHAPTER VII

CONCLUSION

Historian John David Smith has recently written that many writers have “celebrated the Piedmont as a distinct historical, economic, and cultural region—one denoting a special southern sense of place.”¹ The region, Smith observes, has been lionized in popular culture for its rapid demographic expansion, its modern financial hubs, its distinctive mill towns and villages, and even its barbecue. Except, perhaps, for the characterization of the region as distinctively “southern,” much about Smith’s observation rings true for the Revolutionary era. By outsiders, at least, the Piedmont was certainly perceived as a distinct region, one set apart culturally and politically more than geographically. This dissertation has shown that first colonial and then state officials met with a host of challenges owing to the unique nature of the region. But if the region and its people were distinctive, for much of the period encompassed by this study, the Piedmont did not encompass a unified body of people whose interests were always aligned. As historians have long recognized, this region hailed as a “best poor man’s country” was in fact riven by divisions between people who had come to the region with different ambitions and expectations. Despite the relative socioeconomic homogeneity of the region, which remained populated mostly by small landholders, it experienced a

¹ John David Smith, “‘I Was Raised as Poor and Hard as Any Slave: African American Slavery in Piedmont North Carolina’” *NCHR* 90, No. 1 (January 2013): 2.

remarkable degree of turmoil and disorder from 1760 to 1806. The Piedmont, it is clear, was never a monolithic entity.

Still, scholars have acknowledged the importance of the colonial and Revolutionary Piedmont, finding parallels between the eighteenth-century Regulation, and by extension the farmers of the Piedmont more generally, to other agrarian movements, emphasizing the shared distrust of moneyed interests, a desire for “democratic access to productive resources,” and above all opposition to a “world in which the quest for unlimited material gain overrode consideration of fairness.” Thus some of the agrarian ideals historians have detected in the late antebellum and Civil War eras, and even the Populist movement of the late nineteenth century, had “deep southern roots” in the North Carolina Piedmont.² But their origins, including the fierce and stubborn localism that so often inflected these ideals, were the product of often violent struggle and social divisions, conflict which often excluded large swaths of people from political, social, and even moral legitimacy. These issues, I have suggested, existed almost from the region’s initial settlement by whites, and certainly by 1760.

In studying the region through the lens of criminal justice, I have addressed four interrelated themes. The first, criminality, is at the heart of the work. Criminality is a

² Kars, *Breaking Loose Together*, 216-218. Scholarship on the ambivalence, and even outright hostility, of some southern whites to slavery and its implications for class relations include Charles C. Bolton, *Poor Whites in the Antebellum South: Tenants and Laborers in Central North Carolina and Northeast Mississippi* (Durham: Duke University Press, 1994); David Brown, *Southern Outcast: Hinton Rowan Helper and the Impending Crisis of the South* (Baton Rouge: Louisiana State University Press, 2006); Keri Leigh Merritt, *Masterless Men: Poor Whites and Slavery in the Antebellum South* (Cambridge: Cambridge University Press, 2017); Barton A. Myers, *Rebels Against the Confederacy: Southern Unionists* (Cambridge: Cambridge University Press, 2014).

social and a political construction, one everywhere and always shaped by the priorities, prejudices, and fears of political elites and ordinary people alike. In short, criminality is rooted in specific historical circumstances. I have attempted to shed light on this process—how individuals and entire groups came to be criminals in North Carolina, and how adjacency to power shaped and influenced this process. For example, the Johnston Riot Act, the collection of repressive measures enacted by the colonial Assembly in an effort to crush the Regulation, criminalized crowd actions, long afforded quasi-legal status in both the colonies and in England. In so doing, they prioritized establishing order by forcefully punishing rioters over prosecuting the men whose behavior was the target of the protests. In the wake of the Revolution, the Mecklenburg County court, anxious about a growing and unsupervised black presence in Charlotte, enacted special new restrictions on enslaved people. As Chapters Four and Five show, the revolutionary committees, the new state legislature, and the Whig leaders that dominated the county courts during the Revolution criminalized broad swaths of the region's people they deemed insufficiently enthusiastic about the Revolution. Of course, the criminalization and persecution of dissidents in the Piedmont was not unprecedented in the Piedmont—many people in the region had experienced it just a few years earlier.

The second theme is justice, a protean and contested concept at any time, but especially during the social and ideological ferment of the Revolutionary era, and among the population of the Piedmont. The worldview of some Piedmont yeoman farmers has been the subject of multiple studies, which have argued that their understandings of justice were “inspired and sustained” by evangelical Protestantism, steeped in English

Country ideology, or that their outlook was a straightforward manifestation of class consciousness.³ Each of these essentially ideological factors played a role in developing ideas about justice. While numerous studies have understandably focused on crowd actions and other extralegal activities as a means of achieving justice, as Chapters Two and Three have demonstrated, backcountry men and women were not averse to using the courts to redress their grievances. Indeed, it was when they could no longer achieve justice in this way that they turned to other extralegal (albeit with a certain legitimacy) measures, including violence. During the Revolution however, ideas about legality and legal legitimacy—even, in the abstract, criminality—were less important than retributive justice. As two historians of civil conflict in the region during the Revolution and the Civil War have observed, “organized subversion was a relatively minor force compared to generalized, violent resistance” to oppressive, even criminal actions on the part of revolutionary militia. This was, in no small part, because the courts were closed during much of the Revolution. But like the Regulators, victims of whig violence knew that their adversaries had closed all legal avenues for redress and protection from men that, in many cases, were recognized criminals. This, as much as any other factor, contributed to the appeal of Loyalism in the backcountry—Loyalism had become the only way for many people to achieve justice. After the Revolution, ordinary men and many elites in the Piedmont continued to nurture different views of justice than eastern lawyers, who sought to modernize the state’s legal system, including the criminal justice system. These men,

³ Kars, *Breaking Loose Together*, 5; Ekirch, “The North Carolina Regulators on Liberty and Corruption; Kay and Cary, “Class, Mobility, and Conflict on the Eve of the Revolution” and “The North Carolinian Regulation, 1766-1776: A Class Conflict.”

including many of the state's revolutionary leaders, understood that they were superseding the legal localism cherished by men in the Piedmont. The enslaved, too, found themselves enmeshed in this process—but they sought to assert their own visions of justice—aspirations revealed through the efforts undertaken by whites to circumscribe their lives through regulations.

The third theme I have attempted to trace through this study is disorder, or, more accurately, its opposite. These fraught, politicized concepts—order and disorder—existed in a dialectic in the Piedmont, where attempts to impose order throughout most of the revolutionary period frequently wrought precisely the opposite. Throughout the period, order, the powers of the state, and justice were essentially synonymous to those who sought to impose their will—indeed, to establish order—in the backcountry. Theirs was a vision of justice rooted in power, deference, and hierarchy, one evoked by Henry Eustace McCulloh in Chapter Two when he wished that he was invested with the powers of the “Black Act” to bring down the “powerful interposition of the Chief supporters of His Majesty’s Peace and Government” on the rioters that had assaulted his surveyors.⁴ Paradoxically, though, attempts to impose order on the region led to more disorder, as when men joined Tory partisan fighters out of vengeance or self-preservation. In the state’s dealings with enslaved African Americans, justice was only desirable to the extent that it maintained order. At times, as in the case of Sue cited at the beginning of Chapter Six, the eagerness of locals to maintain order ran afoul of attempts by state political elites

⁴ Memorial of Henry Eustace McCulloh, Governor’s Council Minutes, May 9, 1765, *CRNC* 7:25.

to standardize and rationalize the state's criminal justice system. Generally, though, Piedmont people eagerly supported measures intended to police and discipline an enslaved population they saw as a threat. At the same time, as historian Laura Edwards has argued, even enslaved people participated in the courts, and witnessed the rituals of justice in and beyond the courts. In other words, if the Revolution and its aftermath witnessed the racialization of citizenship in the Piedmont, it was also the seedbed of black legal activism. As the example of Quillo demonstrates, enslaved African Americans were equipped to stake their claims to justice even before emancipation afforded them the opportunity.⁵

The final theme is the power of the state. As Chapters Two and Three demonstrate, farmers in the region fell afoul of criminal justice in no small part due to their belief that their livelihoods were threatened by people, themselves criminals, who exploited them. As I have argued, this was a fundamental struggle over justice, yet it was also one that witnessed the exercise of state power in extraordinary ways. Local elites, colonial officials, and absentee land speculators joined their powers with those of royal governor William Tryon—hardly a natural alliance in the midst of the burgeoning imperial crisis—to destroy the movement. Within three years after militia under Tryon devastated much of the upper Piedmont, the courts that served as the focal points of Regulator protests were closed. In their place were by revolutionary committees, quasi-legal bodies that sought to enforce the Revolution by threats, ostracism, and ultimately

⁵ Laura F. Edwards, "Status Without Rights: African-Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *AHR* 112, no. 2 (April 2007): 365-393.

legal sanctions, thereby making new claims on the people of the region. As the courts reopened after independence—itsself hastened by desires to restore order—many families in the region experienced extraordinary impositions at the hands of the Revolutionary government. They faced requisitions of their animals, drafting of family members into service, and were forced to make countless other sacrifices. Moreover, the Revolution forced individuals into a relationship with the government that most—barring some people in Orange County, the heart of the Regulator movement--had never experienced. They were forced out of positions of neutrality that most seem to have favored as neutrality, and even circumspection, in the face of the Revolution became criminal. The Revolution created a republic in which the state was, theoretically at least, based on volition. Yet many of the people described in Chapters Four and Five had little choice in the matter. If, as some revolutionaries liked to argue, the struggle against British rule was an “appeal to heaven,” whigs in North Carolina sought to take matters into their own hands.

I have attempted to contribute to a few interwoven strands of historiography surrounding the Revolution and the early Republic: social and political histories that stress the coercive, exclusionary, violent nature of the Revolution; legal histories that address the relationship between “state legal culture” and “local legal culture” in backcountry regions like the Piedmont; and a collection of new political histories that illustrate the different aspects of state-building during and after the Revolution.⁶

⁶ Selected examples of the first strand include Holton, *Forced Founders*, McDonnell, *The Politics of War*, Hooch, *Scars of Independence*, Kathleen Duval, *Independence Lost: Lives on the Edge of the American Revolution* (New York: Random House, 2015); Matthew Spooner, “The Problem of Order and the Transfer of Slave Property in the Revolutionary South,” in *The American Revolution Reborn*, ed.

One implication of the narrative of this dissertation has been that a formerly distinct region saw its interests increasingly aligned with the rest of the state, at least in some matters. As noted in Chapters Three, Four, and Five, many of the region's discontented people left, either by force or their own volition, in the wake of the Regulation and the Revolution. Moreover, slavery, though numerically marginal, came to play an increasingly important role in the region's economy and society. This process, in its early stages in the time period covered by this study, continued apace into the nineteenth century, and it contributed to the growth of a slaveholding elite in the region, albeit one that remained small compared to the large plantations of the eastern coastal plains.⁷

This accompanied many other changes experienced by the people of the region in the antebellum era. The advent of railroads, for example, integrated the region with the rest of the state and the nation. In addition to the employment of slave labor, the advent of commercialized agriculture and the emergence of a credit-based system of economic exchange around the mid-nineteenth century helped establish a "permanent class of landless whites" in the central Piedmont. Many of these people opposed secession to one degree or another in 1860, and some, despite their criminalization by the state, retained

Patrick Spero and Michael Zimmerman (Philadelphia: University of Pennsylvania Press, 2016), 231-252. For legal histories, see Edwards, *The People and their Peace*; Lowe, *Murder in the Shenandoah*; and Smith, *The Freedoms We Lost*. For the third category, see Parkinson, *The Common Cause*; Ryan A. Quintana, *Making a Slave State: Political Development in Early South Carolina* (Chapel Hill: University of North Carolina Press, 2018); and Holton, *Unruly Americans*.

⁷ John David Smith, "I Was Raised as Poor and Hard as Any Slave," Bolton, Poor Whites; Kari Peterson, "The North Carolina Railroad, Industrial Slavery, and the Economic Development of North Carolina," PhD diss., UNC Greensboro, 2017; Spooner, "The Problem of Order."

an anti-Confederate stance throughout the war.⁸ While it is a mistake to romanticize the stubborn localism that often undergirded the worldview of ordinary men and women in the Piedmont, it has contributed much to the perception of the region as a distinct political, cultural, and social entity. But despite its pervasiveness, localism seldom reflected a local consensus on justice, the definitions of which were always contested.

⁸ Bolton, *Poor Whites of the Antebellum South*, 27, 144-160.

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